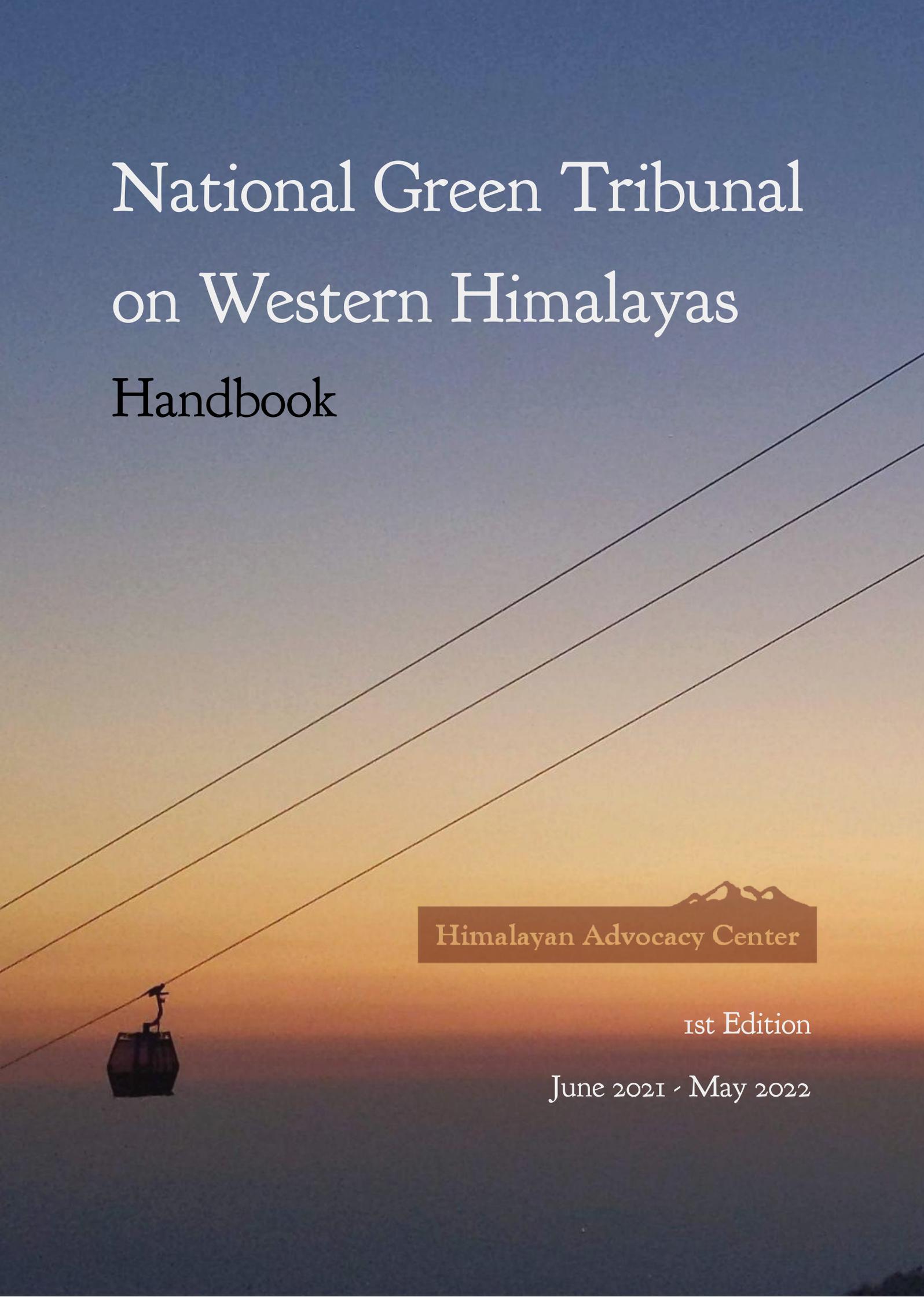


National Green Tribunal on Western Himalayas Handbook



Himalayan Advocacy Center

1st Edition

June 2021 · May 2022

National Green Tribunal on Western Himalayas

Handbook¹

Edited by Utkarsh Jain

Dharamshala
Himachal Pradesh - 176215
India

¹ **Disclaimer:** In accessing or possessing this handbook, you acknowledge and confirm that you are seeking information relating to Himalayan Advocacy Center of your own accord and that there has been no form of solicitation, advertisement or inducement by Himalayan Advocacy Center or its members. The content of this handbook is for informational and educational purposes only and should not be interpreted as soliciting or advertisement. No material/information provided in this handbook should be construed as legal advice. Himalayan Advocacy Center, or any of its members, past or present, shall not be liable for consequences of any action taken by relying on the material/information provided in this handbook.



A man walks past the Faridkot House, a part of which has been leased out to the National Green Tribunal
New Delhi AFP/SCMP

June, 2022

This work is licensed under the Creative Commons Attribution - NonCommercial - Share Alike 3.0 Unported License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/3.0/> or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA.

Suggested citation: Himalayan Advocacy Center, National Green Tribunal on Western Himalayas (2022), <https://www.himalayanadvocacy.com/publications>.

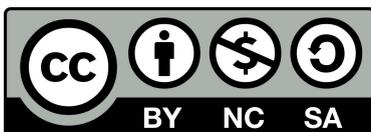


Image on Cover: *Sunset in the Dhauladhar valley* Dharamshala, Himachal Pradesh, Spring, 2022; Image on Page 14: *A schoolbus heads back to Sumur*, Jammu & Kashmir and Ladakh, Summer, 2017; Image on Back: *The Dhauladhar range seen from Narghota*, Himachal Pradesh, Winter, 2021.

“It will therefore sometimes happen that those rules which were made to secure right would if they were closely observed establish wrong, because they would operate in a manner not foreseen when they were made. Upon these occasions the aid of equity is solicited, not properly to control or supersede the law, but so to regulate its operation that it may produce the effect which the law always intends. The decisions of equity as contradistinguished from those of law are not contra legem but praeter legem [not against law but beyond law], they do nothing which the law forbids, they do only what the law desires but cannot perform.”

Sir Robert Chambers

Quoted in Henry E. Smith, Equity as Meta-Law, 130 YALE L. J. 1050 (2021)

Table of Contents

Preface	8-9
Introduction	11-13
Guidance	15-16
National Green Tribunal on Western Himalayas of India²	
1. Ashish Shaunik v. State of Himachal Pradesh , 2021 SCC OnLine NGT 138 (4th June, 2021)	17
2. Darshan Tika Ram Dobhal v. Ministry of Environment & Forest , 2021 SCC OnLine NGT 158	18
3. Surender Singh v. Public Work Department , Original Application 143 of 2021	19
4. Sher Singh v. Government of Himachal Pradesh , 2021 SCC OnLine NGT	19
5. Mahinder Kumar v. State of Himachal Pradesh , Original Application 186 of 2021	
a. Original Application 186 of 2021 , Principal Bench (3rd August, 2021)	20
b. Execution Application 34 of 2021 in Original Application 186 of 2021	20
6. Navkranti Swaraj Morcha Samiti v. State of Uttarakhand , 2021 SCC OnLine NGT 201	21
7. Yogindra Mohan Sengupta v. Union of India , Original Application 121 of 2014	
a. Miscellaneous Applications 56 - 58 of 2021	23
b. Miscellaneous Applications 59 and 60 of 2021	24
c. Miscellaneous Application 68 of 2021	24
d. Miscellaneous Application 22 of 2022	25
8. Ajay Bisht v. State of Uttarakhand , 2021 SCC OnLine NGT 265	25
9. Citizens for Green Doon v. Union of India , Original Application 240 of 2021	
a. Original Application 240 of 2021	26

² Case numbers have been used for matters where an SCC Online citation is unavailable. All cases mentioned have been settled by the Principal Bench of the National Green Tribunal at New Delhi.

b. Appeal 29 of 2021, Principal Bench	26-28
10. Arvind Baniyal v. State of Uttarakhand, Original Application 144 of 2019	29-30
11. Ramesh Chandra Kapri v. State of Uttarakhand, Original Application 168 of 2019	30
12. Chief Executive Officer, Municipal Council, Bandipora, Kashmir v. Jammu and Kashmir Pollution Control Board, 2021 NGT OnLine NGT 268	31
13. Chander Singh v. Union of India, 2021 SCC OnLine NGT 309	
a. Original Application 995 of 2019, 2021 SCC OnLine NGT 309	32
b. Review Application 41 of 2021 in Original Application 995 of 2019	33
14. Amresh Singh v. Union of India, 2021 SCC OnLine NGT 274	33-34
15. Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri, Original Application 258 of 2021	35
16. Qurx Pharmaceuticals v. Himachal Pradesh Pollution Control Board, Appeal 27 of 2021	35-36
17. Raja Muzaffar Bhat v. State of Jammu and Kashmir, 2021 SCC OnLine	36-38
18. Bhagwan Singh v. State of Uttarakhand, Appeal 26 of 2021	38
19. Capt. P. C. Bhandari v. Rameshwar Sharma, Original Application 315 of 2021	39
20. Abdul Majeed Najar v. Umar Soil and Constructional Works, Original Application 331 of 2021	39
21. Court on its Own Motion v. State of Himachal Pradesh, Original Application 389 of 2018	40
22. Ishlam Deen v. State of Himachal Pradesh, Original Application 220 of 2020	
a. Execution Application 27 of 2021 in Original Application 220 of 2020	41
b. Review Application 7 of 2022 in Execution Application 27 of 2021	41-42
23. Vippin Nayar v. Union of India, 2022 SCC Online NGT 9	42
24. Chaitanya Bhandari v. Uttarakhand Environment Protection and Pollution Control Board, 2022 SCC OnLine NGT 12	43
25. Team Taoveda Dimensions NGO v. Union of India, 2022 SCC OnLine NGT	43-44
26. Pyar Singh v. State of Himachal Pradesh, Original Application 424 of 2021	44

27. Mahila Mandal v. State of Himachal Pradesh, Original Application 448 of 2021	44
28. Champa Thakur v. State of Himachal Pradesh, Original Application 32 of 2022	44
29. Rajinder Kaur v. Union of India, 2022 SCC OnLine NGT 54	45
30. Usha Chand v. State of Himachal Pradesh, Original Application 283 of 2021	45
31. Joginder Bhandari v. Union Territory of Jammu and Kashmir, 2022 SCC OnLine NGT 66	46
32. Satish Chander Singh v. Uttarakhand Environment Protection and Pollution Control Board, 2022 SCC OnLine NGT 71	46
33. Jagdish Chandra Pandey v. State of Uttarakhand, Original Application 197 of 2020	47
34. In re: News item published in The Tribune dated 22.02.2022 titled “7 killed in blast at firecrackers factory in Himachal Una, Original Application 143 of 2022	47
35. In re : News item published in The Hindu dated 27.02.2022 titled “Tourism has brought economic prosperity to the Himalayan region, but the environmental cost has been catastrophic”, 2022 SCC OnLine NGT 87	48
36. Kamal Kishore Kandpal v. State of Uttarakhand, Original Application 156 of 2022	48
37. Gulshan Kumar v. State of Himachal Pradesh, Original Application 213 of 2022	48
38. People's Union of Legal Rights v. Principal Chief Conservator of Forests, Original Application 214 of 2022	49
39. Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original application 136 of 2020	
a. Original Application 136 of 2020	50-51
b. Review Application 14 of 2022	51
40. Rita Sharma v. State of Himachal Pradesh, Original Application 5 of 2020	52
41. Bharti Kawatra v. Uttarakhand Tourism Development Board, Original Application 218 of 2022	53
42. Rakesh Verma v. State of Uttarakhand, 2021 SCC OnLine NGT 261	53-54
43. D.V Girish v. Union of India, 2022 SCC OnLine NGT 117	54-55

44. In re : News item published in Hindustan dated 21.04.2022 titled “Village in danger due to fire in forest”, Original Application 301 of 2022	56-57
45. Naveen Rana v. State of Uttarakhand, Original Application 296 of 2022	57
46. Tejinder Kumar Jolly v. State of Uttarakhand, Original Application 449 of 2019	57-58
47. Pramod Kumar Sharma v. Uttarakhand Environment Protection & Pollution Control Board, Original Application 316 of 2021	58
48. Shivalik Emerald Hills Residents Welfare Society v. Department of Forest, Uttarakhand, Original Application 215 of 2021	58
49. Acharya Shri Chander College of Medical Sciences & Hospital v. J & K Pollution Control Board, Appeal 21 of 2022	59
50. Chief Executive Officer, Municipal Council, Sopore v. J & K Pollution Control Board, Appeal 23 of 2022	59-60
Index of Supreme Court cases cited	61

Preface

The process of compiling and organizing this handbook came from a need felt by all practicing advocates - the need to keep themselves updated with the law, and its interpretation by the courts of law. I also always wished to give back to the Western Himalayas, where I grew up, in a way that merged this proximity to the region with my profession. Then there were the books and law review articles on the need for lawyers to work on the field, as assistants and not protagonists. It seemed intuitive then, to start with mapping all orders of the National Green Tribunal (“NGT”) relevant to this region, in an easy to read and usable and contemporary format.

Although there is extensive literature providing a broad overview of the NGT, lasting attention towards how the Himalayas have shaped its jurisprudence and *vice versa* is scant, scattered or dated. This effort³ was undertaken, with a sole focus on the Western Himalayan region consisting of Uttarakhand, Himachal Pradesh and Jammu & Kashmir and Ladakh⁴. This region is at a crucial international frontier where the environment and international relations suffer from great instability, directly impacting two of Asia’s most important river basins - Sindhu and Ganga, and India’s defense priorities. Himalayan ecology often finds itself at the very center of this instability.

What you are reading gathers a fairly representative picture of how the NGT has considered and settled environmental issues of the Western Himalayas over a time period of one year (June 1st, 2021 - May 31st, 2022). Each case summary is vividly referenced, keeping context in mind. This means that you can visualize the reports, policies, legislation and most importantly, the location behind a judicial order on the click of a button. The Black’s Law dictionary definitions of certain crucial (and commonly used by the Tribunal) terms have been duly added in footnotes.

Although the case summaries have been arranged in chronological order, orders passed in connected execution, miscellaneous, and review applications have been placed together for

³ With support from Ritika Singh, Institute of Law, Nirma University, and Deepansh Tripathi, South Asian University. More [here](#).

⁴ Although Jammu & Kashmir and Ladakh are two separate Union Territories, the nomenclature used by the High Court at Srinagar is ‘Jammu & Kashmir and Ladakh’, has been adopted in this handbook, with due respect. This is with the exception of case titles and separate nomenclatures used by agencies like the ‘Jammu & Kashmir State Pollution Control Board’.

convenience. The subject matter of each case has also been flagged with key words - for instance, sand mining, stone crushing, construction or a combination of such issues. ‘Standard’ subject matter/issue based classifications have been left out in the interest of preserving subjectivity.

It may be noted that many cases of significant importance are still being adjudicated by the Tribunal, hence not making it to these pages. However, considering major pending issues on law and fact, including on high altitude urban planning, and watershed conservation, the Himalayan Advocacy Center continues to track these issues via our website and google maps, which pair well with this handbook for all those interested in a more granular approach.

It is our hope at the Center that this handbook only evolves from here, to incorporate more orders and perspectives from the ground and Tribunal itself, over time. A collection of judicial orders is insightful in ways that reading individual orders is not. What those ways are, only time can tell - for to lay them out prematurely here would be to submit to the need to drive the narrative - which properly belongs in the hands of those that are facing environmental issues.

Utkarsh Jain
Dharamshala
June, 2022

National Green Tribunal in the Western Himalayas from June 1st, 2021 till May 31st, 2022, as depicted on Google Earth.



Introduction

Perhaps most crucial to contemporary Indian democracy are her temples of justice, the constitutional courts. And yet, the concrete jungles built over the increasingly unstable slopes of Shimla made it impossible for one such temple, the High Court of Himachal Pradesh to be rebuilt. In its landmark 2017 judgment in *Yogindra Mohan Sengupta v. Union of India*, the NGT warned of a ‘terrible loss of person, property and natural resources of Shimla’ but for the most stringent adherence to environmental law. That judgment is one of the few of such import, that still hold ground in the Tribunal’s jurisprudence⁵. In a pending matter, the Tribunal finds itself considering an absurd situation - that of the State of Himachal Pradesh effectively sitting in appeal over the Tribunal's judgment in *Yogindra Mohan Sengupta*⁶, by encouraging large scale construction in the 2041 master plan of Shimla - and possibly the unimaginable loss of life which would follow, in the event an earthquake occurs.



Indicative locations of areas from where road construction issues arose before the National Green Tribunal

To state that the Tribunal is discharging an unpopular function is to state the bare minimum. The declared policy priority of the National Highways Authority of India (“NHAI”) has been to develop an extensive network of highways crossing across the Western Himalayas, to bring

⁵ Others of significance have been *S.P Muthuraman v. Union of India*, 2015 SCC OnLine NGT 169, *Himmat Singh Shekhawat v. State of Rajasthan*, 2015 SCC OnLine NGT 846 and *Sreeranganathan K.P. v. Union of India*, 2014 SCC OnLine NGT 15.

⁶ *Yogendra Mohan Sengupta v. Union of India*, Original Application 297 of 2022, Order dated 12th May, 2022.

in tourism and secure India's defense requirements. And yet those very highways have a devastating impact on commerce, human and non-human life, and the ecology of the Himalayas. This past year, the Tribunal considered various such cases - from the National Highway 44 connecting Udhampur to Banihal⁷ to National Highway 72A connecting Ganeshpur and Dehradun⁸. In the latter, we witness an illuminating back and forth between the Supreme Court and Tribunal, on a Section 16 issue concerning the appropriate stage at which a government decision may be challenged under the NGT Act, 2010⁹. The former is an ideal case study for the consequences that unfettered development and financial mismanagement may have on slope stability and the rule of law.

With development comes waste of all kinds. From pharmaceutical and biomedical to plastic and construction waste. The Tribunal considered a substantial number of such cases, impacting some of our most pristine wetlands (such as the Wular) and rivers, including the Khoh¹⁰, Tirthan¹¹ and Sutlej¹².

A striking reminder of the consequences of such waste finding its way into rivers was the *Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh*¹³ case, which brought up the issue of 'antimicrobial Resistance', in what may be called factual and dystopian in equal measure - the creation of medicine resistant microorganisms. Of note is the affidavit of the Ministry of Environment, Forest and Climate Change ("MoEFCC") here, citing India's need to effectively compete with the Chinese pharmaceutical manufacturing market, also recently emphasized by the Minister of External Affairs on the issue of national security. Such was the degree of pollution, that the Tribunal was constrained to give effect to standards on 'bulk drugs' yet to be finalized by the MoEFCC, a situation having its own bearing on the separation of powers between judiciary and executive.

It is becoming clear that the NGT may no longer be considered as a body solely adjudicating Section 14, 15 and 16 matters¹⁴ - provisions requiring minimum thresholds of specificity in terms of limitation period, nature of executive action questioned, factual matrix and such. The Supreme Court has made this abundantly clear in its recent judgments on the Tribunal's *suo motu* powers to tackle environmental issues¹⁵. The Tribunal is charged with effectuating both

⁷ Amresh Singh v. Union of India, 2021 SCC OnLine NGT 274.

⁸ Citizens for Green Doon v. Union of India, 2021 SCC OnLine NGT 326.

⁹ Citizens for Green Doon v. Union of India, 2021 SCC OnLine SC 1074 at paragraph 8.

¹⁰ Arvind Baniyal v. State of Uttarakhand, Original Application 144 of 2019, Order dated 7th October, 2021.

¹¹ Ashish Shaunik v. State of Himachal Pradesh, 2021 SCC OnLine NGT.

¹² Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original Application 136 of 2020, Order dated 6th April, 2022.

¹³ Ibid.

¹⁴ See National Green Tribunal Act, 2010 ("NGT Act").

¹⁵ Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897 at paragraphs 51-75.

Article 21 and India's commitments made in the Stockholm and Rio conventions¹⁶. This brought up a host of larger, ostensibly pure policy centric issues of tourism¹⁷, forest fires¹⁸ and ecologically sensitive areas¹⁹. Conspicuous by its absence here was the issue of climate change. The Tribunal passed important directions on each of these issues without having a specific fact situation brought before it, via an Original Application or Appeal. This is of course not to say that the Tribunal did not consider various specific issues passing standalone orders shedding light on its jurisprudence concerning the Western Himalayas. Although one year is far too less to draw definitive trends, it is heartening to observe the development of a *sui generis*²⁰ Himalaya focussed jurisprudence, by the Tribunal.

Utkarsh Jain

¹⁶ Id. at paragraph 43. *See also* Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494 and NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566.

¹⁷ In re : News item published in The Hindu dated 27.02.2022 titled "Tourism has brought economic prosperity to the Himalayan region, but the environmental cost has been catastrophic", 2022 SCC OnLine NGT 87.

¹⁸ In re : News item published in Hindustan dated 21.04.2022 titled "Village in danger due to fire in forest", Original Application 301 of 2022, Order dated 29th April, 2022.

¹⁹ D.V Girish v. Union of India, 2022 SCC OnLine NGT 117.

²⁰ Of its own kind or class; unique or peculiar, Black's Law dictionary, 9th Edition. This would be, in a way similar to the NGT itself, *see* Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897, at paragraphs 63-67.



Guidance

1. We intentionally designed this document to be a handbook rather than a casebook. The need to balance brevity with enough background information to allow for independent research, time period for which judicial orders were considered, and an audience beyond legal professionals informed our choices,
2. All hyperlinks have been colored “gray” to differentiate them from standard text. You can access further information by clicking (try here) on each hyperlink. Note that the link may open on the same page on the browser. To access the handbook, simply go back,
3. This handbook covers cases disposed of or concluded by the Tribunal. For further detail, we suggest you refer to our judicial tracker for information on all cases, disposed or ongoing. The tracker is available on [Google Maps](#) as well as [Google Docs](#),
4. This handbook can be used in print as well as online. However, accessing it online allows you to access hyperlinks and in turn, a lot more material connected with each case. This includes maps, reports, reportage, papers, connected judicial orders and such,
5. We have arranged case summaries in the following format, with the exception of connected cases mentioned in the next point:

Line 1: <Case title> <Citation/Case number> <Date>

Line 2: <Key Words>

Line 3 onwards: <Summary>

6. For connected cases, i.e. miscellaneous, review or execution applications pertaining to the same issue, the format used is as follows:

Line 1: <Case title> <Citation/Case number> <Connected matters>

Line 2: <Key words for all connected matters>

Line 3 onwards: <Connected matter title> <Date> <summary>

7. A case number has been provided for those judicial orders which have not been reported on SCC OnLine as of June, 2022,
8. For any suggestions, queries or inquiries, please reach out at:

Information@himalayanadvocacy.com

Ward No. 10, Nagar Nigam Dharamshala, Sham Nagar, PO and Tehsil Dharamshala,
District Kangra, Himachal Pradesh - 176215

National Green Tribunal on Western Himalayas of India

1. Ashish Shaunik v. State of Himachal Pradesh, 2021 SCC OnLine NGT 138 (4th June, 2021)

stone crushing proximate to rivers and protected areas, precautionary principle, sustainable development principle, power of Tribunal to review delegated legislation, powers of High Court *vis a vis* judicial review²¹

This case concerns the operation of stone crusher units in village Banala, District Mandi, H.P. According to the petitioner, the units were operating in close proximity to the Tirthan river, Great Himalayan National Park, Tirthan Sanctuary, the local government school, hospital, and reservoir of Larji Dam.

Citing the precautionary principle²², the Tribunal directed the stone crusher owner to prepare an action plan to mitigate²³ the harm already caused by the units. The Tribunal directed that this plan be approved by the H.P. Pollution Control Board (“PCB”), and implemented within two months. The Tribunal also emphasized that in light of the precautionary principle, no exemption should be permitted from existing environmental norms.

The issue of a one time exemption granted to stone crushers affiliated with hydroelectric projects considering public interest was also raised. This exemption was interpreted by the Government of H.P. to be of a general nature, considering a reference of the phrase “public interest” in 2014 guidelines pertaining to stone crushers²⁴. The Tribunal clarified that the exemption granted was limited to a specific instance of crusher units working only for the purpose of constructing the hydropower project using muck generated in the process of tunneling.

²¹ See State of Himachal v. Bhag Singh, 2020 SCC OnLine HP 2680, see also Ghangal Stone Crusher v. State of Himachal Pradesh, CWP 3711 of 2021 and Himachal Grit Udyog v. Union of India, Civil Appeal 94 of 2019.

²² For a recent commentary on the precautionary principle in the context of the NGT, see Municipal Corporation of Greater Mumbai v. Ankita Sinha, 2021 SCC OnLine SC 897, paragraphs 76 to 81.

²³ To make less severe or intense; Mitigation of damages doctrine: The principle requiring a plaintiff, after an injury or breach of contract, to make reasonable efforts to alleviate the effects of the injury or breach, Black’s Law dictionary, 9th Edition.

²⁴ See also 2021 notification amending 2014 guidelines pertaining to stone crushers.

2. Darshan Tika Ram Dobhal v. Ministry of Environment & Forest, 2021 SCC OnLine NGT 158 (15th June, 2021)

stone and muck Dumping in forest area, demarcation of land, environmental compensation

This case concerns dumping of muck²⁵ and stones inside a forest in the process of building a road, by the Uttarakhand Government Public Works Department (“PWD”) in Chakrata, District Dehradun.

In September, 2020, noting the damage caused to the environment due to such dumping, the Tribunal directed the forest department and Uttarakhand PCB to find out the extent of damage and also to take necessary action.

The report, submitted in April, 2021, stated that although no trees had been felled, dumping had, in fact, occurred in the reserved forest (called 'reserved land')²⁶, which accounted for a total of about 8 percent of the affected land. The forest department noted that the dumping was done in slope areas and not at the designated sites and had imposed a fine of 2.21 lac on the PWD.

The Tribunal directed the PWD to abide by the siting norms²⁷ for dumping and the forest department to keep vigil on the area.

(Continued)

²⁵ In a development project, muck is the material excavated, tunneled, dislodged or caused to be dislodged as collateral effect of primarily human interference from its natural position to its new location, *see* report of expert committee report on muck disposal and management in Tapovan Vishnugad Hydroelectric project available here.

²⁶ For a commentary on the scope of the term ‘forest’ in Uttarakhand, see news article titled “New Definition of Forest Foreshadows End of Forests in Uttarakhand”.

²⁷ For a commentary on disposal of road muck and debris in Uttarakhand, see article titled “Uttarakhand: Ensure safe disposal of Rural Road debris”.

3. Surrender Singh v. Public Work Department, Original Application 143 of 2021, Principal Bench (July 6th, 2021)

felling of trees by a government agency, road construction

This case concerns the issue of felling of mango and oak trees in the process of road construction in Jamrari Band, District Almora, Uttarakhand, by the PWD. The Tribunal directed the Divisional Forest Officer of Almora to look into the situation while noting the need to take remedial action²⁸ if required.

4. Sher Singh v. Government of Himachal Pradesh, 2021 SCC OnLine NGT 186 (8th July, 2021)

encroachment of Government land, delay in protecting public land against encroachment, adjudication on legislation not included in Schedule I of NGT Act, 2010

This case concerns the issue of encroachment²⁹ on Government Land in Narkanda, where a question of presence of forest was also involved.

Reflecting the serious views taken by the Supreme Court on encroachments on forest land and environmental rule of law (in context of construction of a bus stand in forest area at Mcleodganj, Himachal Pradesh) in the recent past, the Tribunal took directed the Chief Secretary, Himachal Pradesh to ensure that eviction proceedings and remedial action to protect government land be carried out.

This direction came despite the finding that although the said piece of land was a '*gair mumkin sadak*³⁰' belonging to the government, it was a non-forest area.

(Continued)

²⁸ An action intended to bring about or restore long-term environmental quality; Remediation: the restoration of polluted land, water, or air to its former state, or as nearly so as is practical; Restitution: The set of remedies associated with that body of law, in which the measure of recovery is usually based not on the plaintiff's loss, but on the defendant's gain, Black's Law Dictionary, 9th Edition.

²⁹ An infringement of another's rights; an interference with or intrusion onto another's property, Blacks's Law dictionary, 9th Edition.

³⁰ *Gair mumkin* indicates uncultivable, *see* Delhi Development Authority v. Mohd. Saleem, 2012 SCC OnLine Del 4859, at paragraph 17.

5. Mahinder Kumar v. State of Himachal Pradesh, Original Application 186 of 2021, Principal Bench (Connected matters)

hot mix plant operation, operation without consent, lacunae in siting criteria for hot mix plants, precautionary, sustainable development and polluter pays principles

This case concerns the operation of a hot mix plant in Madhubaad, Chamba, Himachal Pradesh.

- a. **Original Application 186 of 2021**, Principal Bench (3rd August, 2021): The petitioner alleged that the plant is causing pollution, operating without relevant consents from the Himachal Pradesh PCB, and located merely 50 meters from a primary school. The Tribunal directed the board to take further remedial measures within one month.
- b. **Execution Application 34 of 2021** in Original Application 186 of 2021, Principal Bench (17th December, 2021): The application sought execution³¹ of order for remedial action against illegal operation of a hot mix plant at Madhubad Village, P.O Jasougrah, Churah Tehsil, Chamba District without the required permissions and equipment which has resulted in adverse impacts on the environment and public health. On the basis of the report filed by State PCB, the Tribunal observed that the hot mix plant still does not have requisite consents. The State PCB in their report claimed to have issued show cause notice dated 18th August, 2021 on the issue of installing requisite pollution control devices and making improvements, followed by a notice dated 28th October, 2021, to stop the plant till Consent to Operate (“CTO”) is obtained. The Tribunal noted that the PCB has not assessed and recovered the compensation for the period for which the hot mix plant had already illegally operated on ‘polluter pays³²’ principle which needs to be done expeditiously, following due process of law. It directed the PCB to adopt an appropriate siting policy, if not laid down so far, having regard to the fact that hot mix plants are hazardous to the environment with huge potential for air pollution and are established in violation of precautionary and sustainable development³³ principles.

³¹ See Section 25, NGT Act.

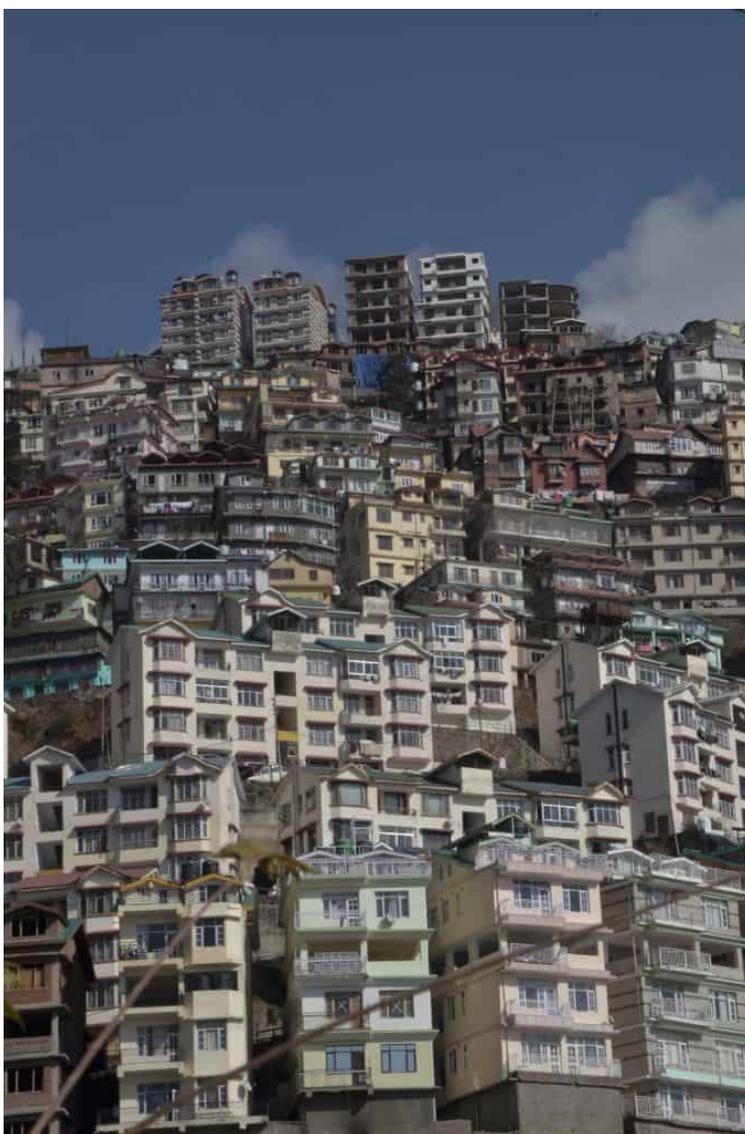
³² For a recent judgment of the NGT wherein the polluter pays principle was applied via imposition of environmental compensation, *see* Janajagriti Samithi v. Union of India, Original Application 26 of 2013, Southern Zone Bench.

³³ For a recent commentary on the principle of sustainable development, *see* T.N Godavarman Thirumulpad v. Union of India, 2022 SCC OnLine SC 583, at paragraph 15.

6. Navkranti Swaraj Morcha Samiti v. State of Uttarakhand, 2021 SCC OnLine NGT 201 (16th August, 2021)

tree felling, continuing inaction of authorities

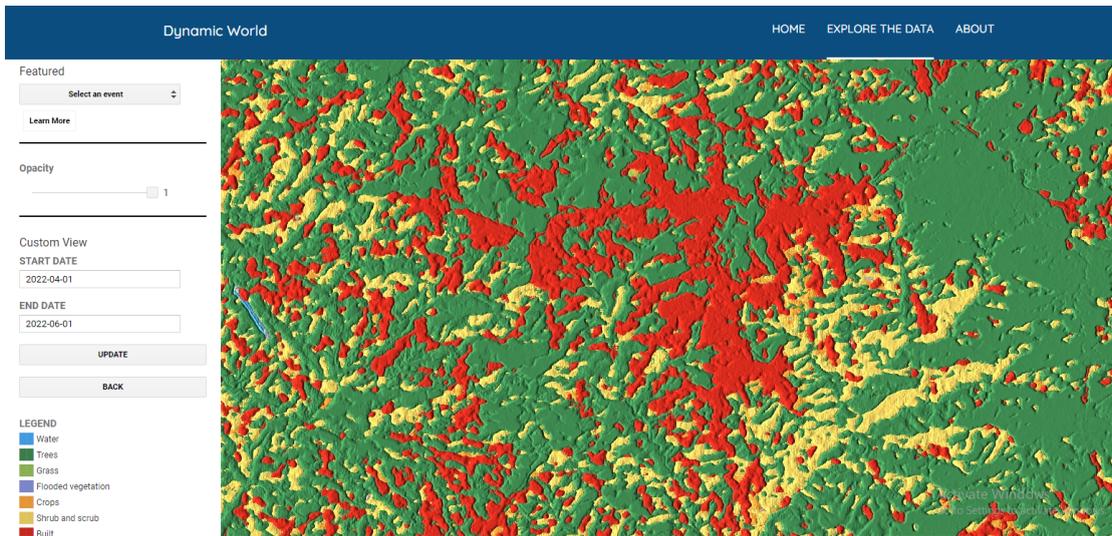
This case concerns large scale tree felling in Rajawala, Dehradun, Uttarakhand allegedly being carried out by private parties using JCBs since the past many years. The petitioner mentioned that the use of these machines is being allowed by the revenue officer and sub-divisional magistrate. The Tribunal directed that a committee consisting of the State Environmental Impact Assessment Authority (“SEIAA”), Forest Department, and District Magistrate be formed to ascertain facts and take remedial action.



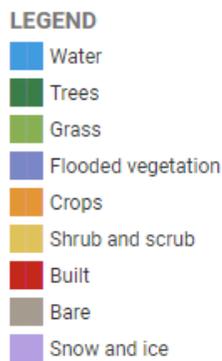
Multi story construction in Shimla Pradeep Kumar



Shimla rendered on Google Earth Dynamic World on 16th November, 2017 when the NGT passed judgment in the Yogindra Mohan Sengupta case, imposing severe restrictions on construction in the city. The red portions indicate built up area Google



Shimla rendered on Google Earth Dynamic World on 15th June, 2022 Google



Google

7. Yogindra Mohan Sengupta v. Union of India, Original Application 121 of 2014, Principal Bench (Connected matters)

construction in judicially regulated land use area, precautionary, polluter pays and sustainable development principles, planning, public trust doctrine, intergenerational equity, carrying capacity, *in dubio pro natura*, biodiversity, right to property and due process, *functus officio*, *stare decisis*, judicial infrastructure

The Tribunal had, via a 2017 judgment, imposed various restrictions on development of any kind in the Shimla Planning area, and set in place a two-tier regulatory mechanism consisting of expert committees.

a. Miscellaneous Applications 56 - 58 of 2021 in Original Application 121 of 2014, Principal Bench (31st August, 2021), Application filed by Rail Land Development Authority

This case concerns an application made by the Rail Land Development Authority seeking construction of a multi level parking lot and hotel in Shimla. The authority had applied considering that the Tribunal, in a past judgment, had imposed stringent restrictions on any construction work in Shimla. Particularly, the Tribunal had prohibited any new construction in any part of the 'core and forest areas' of the city (as demarcated by a development plan). Even outside these areas, the Tribunal directed that construction would strictly have to be in accordance with planning and environmental laws, and seek permission from specially designated expert committees created by the Tribunal in the judgment. Based on its judgment, the Tribunal concluded that a parking lot and hotel would not be permissible construction. Importantly, the Tribunal noted that often, commercial³⁴ construction is sought in the garb of public utilities³⁵, which causes severe damage to the unstable mountain environment of Shimla, as established by various experts. The directions came despite an argument made by the authority that the High Court at Shimla has in fact deemed such construction necessary.

³⁴ See definition of 'commercial use' under Himachal Pradesh Town and Country Planning Act, 1977.

³⁵ Indicative of "hospitals, schools and offices of essential services but would definitely not include commercial, private builders and any such allied buildings". See *Yogindra Mohan Sengupta v. Union of India*, Original Application 121 of 2014, at paragraph 112.III.

- b. **Miscellaneous Applications 59 and 60 of 2021** in Original Application 121 of 2014, Principal Bench (13th September, 2021), Applications filed by Pushpa Bragta and Himachal Pradesh Administration Department

Similar to the application seeking construction of a parking lot, the petitioners sought construction in existing structures in a restricted area under the 2017 judgment. The structures sought to be constructed included a lift within a building for purposes of accessibility, a ramp, and a multi story parking lot in Shimla.

On coming across the issue of parties seeking permits to construct in an area for which the Tribunal had already issued binding restrictive directions again, it sought to clarify the law with respect to seeking orders in a decided case. Such orders may only correct unintended mistakes, and not delve into matters of modification or re-adjudication on substantive issues and merits. In other words, once the court has given finality to a case via a judicial order, its jurisdiction to make any modifications to the same comes to an end (*functus officio*³⁶) with the exception of clerical/arithmetic errors³⁷.

- c. **Miscellaneous Application 68 of 2021** in Original Application 121 of 2014, Principal Bench (8th October, 2021), Application filed by the High Court of Himachal Pradesh

This case concerned yet another application seeking permission to construct in an area where the Tribunal had previously strictly regulated construction due to the extreme stress on the ecology of Shimla, Himachal Pradesh. The Tribunal, whilst taking note of the highest priority that expansion of the High Court complex entails, refused to permit any expansion, citing the 2017 judgment. The Tribunal emphasized on the various directions in that judgment, with particular reference to the complete embargo on any new construction in the core and forest areas of the city, even if that construction was of an 'institutional' nature (Directions II, XI, and XVI). Of note was the weight the Tribunal placed on a report of the Comptroller and Auditor General of India on regulation of constructions in hill areas of Himachal Pradesh. It also noted that a construction cannot be permitted even on an exceptional basis if it impacted public safety and degree of ecological vulnerability of Shimla.

³⁶ [Latin "having performed his or her office"] (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished, Black's Law dictionary, 9th Edition, *See also* SBI v. S.N. Goyal, (2008) 8 SCC 92, at paragraphs 26 and 27.

³⁷ Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169 at paragraphs 9 and 10.

d. **Miscellaneous Application 22 of 2022** in Original Application 121 of 2014, Principal Bench (12th April, 2022) Application filed by the petitioner in Original Application 121 of 2014

Yogendra Mohan Sengupta, the petitioner in the 2017 judgment, filed this application raising the issue of the 2041 Shimla Masterplan. The petitioner alleged that the plan was in violation of the judgment of the tribunal in the Yogendra Mohan Sengupta case. The Tribunal, whilst relying on other orders passed in similar applications, found that a master plan could not be challenged by filing a case in a decided matter.

8. Ajay Bisht v. State of Uttarakhand, 2021 SCC OnLine NGT 265 (3rd September, 2021)

dumping of muck during road construction, public interest, tree felling, environmental compensation, restoration

This case concerns improper dumping and disposal of muck during the construction of a road in Jaminipar, Almora, Uttarakhand. The Government initially stated that the road was built in public interest (met with objections by the Jaminipar Gram Panchayat), but on further directions of the Tribunal, a Government fact finding team found that muck had indeed been dumped outside the designated areas and in violation of the forest clearance³⁸ granted for construction purposes, and the muck disposal plan submitted by the PWD. Other reasons stated by the Government for justifying violations were the inability to execute the muck disposal plan due to coronavirus and a strike by workers. During the process of road construction, a large number of trees were also cut, unaccounted for. The Government recommended that the felled trees may be valued and an amount be deposited with the Uttarakhand treasury as forest revenue. The Tribunal directed the PWD to strictly abide by the recommendations of the Government in the report submitted, including adherence with the muck disposal plan, and imposed an additional penalty of 2,00,000 on the department for violations of the forest clearance permit.

(Continued)

³⁸ For a recent commentary of the forest clearance process vis a vis appellate powers of the NGT, see *Citizens for Green Doon v. Union of India*, 2021 SCC OnLine SC 1074.

9. Citizens for Green Doon v. Union of India, Original Application 240 of 2021, Principal Bench (Connected matters)

felling of trees due to expansion of highway project, judicial and merit review, appellate powers of NGT and Supreme Court, felling of forest, misleading information in permitting process, application of mind, cause of action, cost benefit analysis, biodiversity, mitigation, National Forest Policy, carrying capacity, compensatory afforestation, safeguards, balancing and proportionality, strict scrutiny, wildlife corridor, eco sensitive zone

This case concerns the proposed expansion of a 20 kilometer stretch of NH72A between Ganeshpur and Dehradun, Uttarakhand, from a 2 lane to a 4 lane highway along with a 25 meter carriageway.

a. Original Application 240 of 2021, Principal Bench, 2021 SCC OnLine NGT 290 (6th October, 2021)

The petitioner alleged that out of the total 57.3 hectare forest land involved in this project, about 9.6 hectare is classified as a very high density forest. The petitioner also raised issues with respect to misleading³⁹ reporting of local wildlife and lack of assessment of the biodiversity⁴⁰ of the areas impacted by the project. The Tribunal noted that the correct remedy under law in this case was to file an appeal against the permit given for the road expansion project which was not done despite a Supreme Court order stating the remedy in another case filed by the same petitioner in a similar fact scenario. The Tribunal noted that the permitting process under the Forest (Conservation) Act, 1980, is two tiered and permission to cut trees is granted after the first tier permit, and that there was no fact or reason to show that the cutting of trees involved was illegal. However, the Tribunal clarified that all efforts need to be taken to protect trees, and abide by permits.

b. Appeal 29 of 2021, Principal Bench, 2021 SCC OnLine NGT 326 (13th December, 2021)

The petitioners had initially raised the issue of large scale felling of trees in process of road widening and elevated corridor construction from Ganeshpur to Dat Kali Temple in Uttarakhand. The Tribunal had dismissed that petition reasoning that the petitioners

³⁹ Calculated to be misunderstood, Black's Law dictionary, 9th Edition.

⁴⁰ See Section 35(4)(i) of the Biological Diversity Act, 2002.

should instead have filed an appeal against forest clearance to be given for the road widening project. The Supreme Court, in a detailed order, set aside the Tribunal's order of dismissal stating that it was bound to consider the grievances of the petitioners. The petitioners hence moved before the Tribunal again in appeal against a Stage I Forest Clearance, issued in the midst of proceedings before the Supreme Court, for the purpose of felling of trees in forest land for the road widening project in question. The appeal was amended to challenge additional permits, as a final forest clearance by the State of Uttarakhand was also issued in the meanwhile.

The petitioners stated various reasons for challenging the clearance order including the absence of detailed studies on the impacts of felling on the surrounding ecologically sensitive landscape, misleading information about biological diversity around the proposed road, absence of a cost benefit analysis⁴¹ and carrying capacity⁴² study, and inadequate mitigation measures.

The Government agencies, including the NHAI, Forest Departments concerned and States of Uttarakhand and Uttar Pradesh (where one end of the project is proposed) opposed the petitioners arguments stating various reasons including - the highways in question was of significant strategic importance from a defense perspective, travel to and from in the hilly regions of the highway was inefficient both to travelers and wildlife under existing conditions, elevated corridors and underpasses were planned keeping wildlife (including elephants) in mind and using detailed studies.

The Tribunal refused to set aside the clearances primarily based on a balancing approach⁴³ required in cases where development in forest areas is inevitable. The Tribunal also reasoned that in the form requiring disclosures about relevant wildlife in the region, a listing of all concerned wildlife was indeed provided, hence deeming the disclosures made to be transparent. The Tribunal also found that the executive appraising authorities had indeed undertaken planning for muck disposal, wildlife impact mitigation (by the National Board for Wildlife), cost benefit analysis⁴⁴ and generally environmental impacts.

⁴¹ See Annexure III of Handbook of guidelines for effective and transparent implementation of the provisions of Forest (Conservation) Act, 1980.

⁴² For a commentary on the concept of carrying capacity, see The study of Environmental Carrying Capacity of erstwhile Udipi Taluk in relation to expansion of 2X600MW Udipi power Plant (UPCL), available [here](#).

⁴³ Balancing test: A judicial doctrine, used esp. in constitutional law, whereby a court measures competing interests as between individual rights and governmental powers, or between state authority and federal supremacy - and decides which interest should prevail, Black's Law dictionary, 9th Edition; For a recent commentary of the 'balancing approach' see *M/s Pahwa Plastics v. Dastak NGO*, 2022 SCC OnLine SC 362. See also *R v. Chester City Council*, (2011) 1 All ER 476 at paragraphs 14 to 16 as relied on in *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338 at paragraph 119.

⁴⁴ An analytical technique that weighs the costs of a proposed decision, holding, or project against the expected advantages, economic or otherwise, Black's Law dictionary, 9th Edition.

Importantly, the Tribunal found that neither Environmental nor Biological Diversity Impact Assessment was mandated under laws and were studied by the existing authorities in any case considering the nature of the proposed project.

Ultimately, the Tribunal did not accept the arguments of the petitioner that the executive authorities concerned failed to apply their mind to the proposed project. It directed that all clearances must be clearly uploaded and communicated⁴⁵ for the sake of transparency and that mitigation measures must be strictly implemented. To ensure this implementation, the Tribunal constituted a 12 member oversight committee headed by the Chief Secretary, Uttarakhand (this committee was later reconstituted by the Supreme Court). It also directed NHAI to deposit an amount of 1 crore for purposes of research into local tree (Sal) regeneration, in addition to increased quantum of compensatory afforestation. Lastly, it directed for additional mitigation measures including cordoning of elevated portions of the highways, noise and light reduction, camera monitoring, animal rescue and awareness.



Legacy waste falling into the Khoh river जागरण

⁴⁵ Communicate: The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception, Black's Law dictionary, 9th Edition.

10. Arvind Baniyal v. State of Uttarakhand, Original Application 144 of 2019, Principal Bench (along with Manoj Negi v. State of Uttarakhand) (7th October, 2021)

waste disposal and burning near river, legacy waste, disposal siting, public health, bioremediation, planning, environmental compensation, sewage, rule of law

This case concerns the illegal dumping and collection of waste over time on the banks of river Khoh, in villages Village Ratanpur, Kashirampur, Gadighat and near the sports stadium at Kotdwar in Uttarakhand. The 'Nagar Nigams' of each of these villages had also been burning this accumulating, or legacy waste⁴⁶ on the river bank. During the pendency of this case, the Supreme Court directed for strict compliance with the Municipal Solid Waste Rules of 2016. The Tribunal itself had been dealing with the issue of illegal waste disposal across India in another ongoing case, where it developed a scheme of monthly penalties to be paid for local bodies (such as nagar nigams) that fail to process waste according to the Solid Waste Rules, based on metrics including population. The rationale of imposing a penalty was the huge costs involved in any non compliance of laws and rules concerning solid waste. It is noteworthy that the Tribunal has also been dealing with yet another nationwide issue with respect to pollution of rivers, the directions in which were referred to in its discussions on solid waste mismanagement.

On noting that the legacy waste issue at the banks of the Khoh continues, the Tribunal, while citing the penalty scheme developed by it on a nationwide scale issued strict warnings to the Secretary of Urban Development and Chief Secretary of Uttarakhand, as well as local officials. The warnings ranged from imposition of penalties on local bodies to criminal liability and adverse entries in the annual confidential reports of the government agency officers concerned. As a result of these warnings, the Secretary of Urban Development, Uttarakhand filed a report with the Tribunal describing various plans, financial schemes, and equipment procured for the purpose of processing legacy waste near the Khoh. However, the Uttarakhand PCB noted that the situation on site had not changed and the river continued to get polluted, in a report filed on the same day as that of the Secretary of Urban Development. The Board also noted that it had issued stringent directions under the Environment Protection Act, 1986, to the Kotdwar Nagar Nigam with respect to immediate stoppage of dumping of solid waste on the banks of the Khoh and establishing a waste processing facility.

⁴⁶ See also CPCB Guidelines for Disposal of Legacy Waste (Old Municipal Solid Waste).

Incidentally, the establishing of facilities also required environmental and forest clearance, as noted by the Secretary of Urban Development.

The Tribunal finally disposed of the matter expressing its disappointment with the state of Uttarakhand in not adhering to the rule of law and not ensuring payment of compensation by erring officers. It also directed the Chief Secretary of Uttarakhand to take further stringent remedial measures in accordance with the various orders passed by it in the past. It may be noted that this inaction on part of the PCB was not a one of instance, with serious issues arising in other cases during the year.

11. Ramesh Chandra Kapri v. State of Uttarakhand, Original Application 168 of 2019, Principal Bench (7th October, 2021)

dumping of solid waste in forest land, planning, environmental compensation, bioremediation, legacy waste, public health

This case concerns dumping of solid waste in forest land in Pithoragarh, Uttarakhand. According to the Government, a detailed project report for a solid waste management plant estimating the cost at about 637 crore rupees had been prepared and the project was awaiting environmental clearance⁴⁷, implementation, and release of funds. However, the Tribunal noted that the illegal dumping continued, citing its orders wherein it had developed a penalty scheme for the issue of legacy waste across the nation. The Uttarakhand PCB, in a report verified the continuing illegalities and pollution due to unscientific methods of dumping. Noting that the fact situation is similar to the Arvind Baniyal case, the Tribunal passed a similar order directing the Chief Secretary of Uttarakhand to take stringent remedial measures.

(Continued)

⁴⁷ For a recent commentary on the environment clearance process, see *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401.

12. Chief Executive Officer, Municipal Council, Bandipora, Kashmir v. Jammu and Kashmir Pollution Control Board, 2021 NGT OnLine NGT 268 (21st October, 2021)

solid waste dumping, appeal filed by agency, environmental compensation, polluter pays principle, past violations, financial constraints at local level, refuse derived fuel, planning, restoration

This case concerns a challenge to directions passed by the PCB seeking environmental compensation⁴⁸ for continuing dumping of solid waste and allied issues in Bandipora, Jammu & Kashmir and Ladakh (in the Wular lake catchment⁴⁹). The Municipal Council of Bandipora made the challenge on the ground that it had remedied all illegalities in waste dumping. However, the Tribunal, citing its previous decisions with respect to protection of water bodies in the Jammu & Kashmir and Ladakh and compensation mechanisms for illegal solid waste dumping, refused to interfere with the order of the PCB. According to the Tribunal, remedial actions do not undo the environmental impact of past illegalities⁵⁰, and therefore, compensation on a scale suggested by the Central Pollution Control Board (“CPCB”) had to be recovered from the Council. The Tribunal also directed for an action plan to be prepared and implemented by the PCB and District Magistrate to stop any unscientific waste dumping and disposal. Importantly, the Tribunal relied on orders passed in other cases where a rule with respect to compensation and remedial measures for Jammu & Kashmir and Ladakh had already been developed, and applied it uniformly in a new case which came before it.

(Continued)

⁴⁸ See Report of the CPCB In-house Committee on methodology for assessing environmental compensation and action plan to utilize the fund, available here.

⁴⁹ See Section 2(j) of Wetlands (Conservation and Management) Rules, 2017.

⁵⁰ See *M.C. Mehta v. Union of India (Shriram - Oleum Gas)*, (1987) 1 SCC 395, *Sterlite Industries (India) Ltd. v. Union of India*, (2013) 4 SCC 575, and *Goel Ganga Developers India (P) Ltd. v. Union of India*, (2018) 18 SCC 257.

13. Chander Singh v. Union of India, 2021 SCC OnLine NGT 309 (Connected matters)

dolomite mining, muck disposal, environmental compensation, geo-referencing, agriculture, overflowing of waste in river, mining across state, eco-sensitive region, compensation

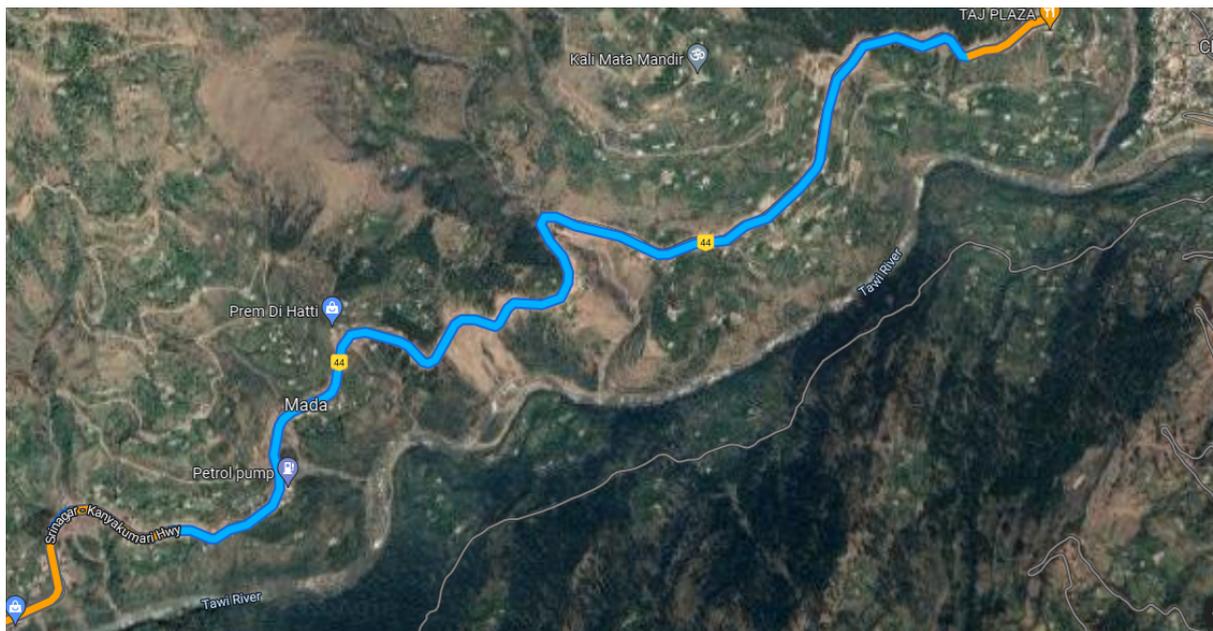
This case concerns illegal mining of dolomite in Dundu, Tehsil Didihat, District Pithoragarh, Uttarakhand covers an area of about 4.2 hectares including about 2.3 hectares of forest land.

a. **Original Application 995 of 2019**, 2021 SCC OnLine NGT 309 (26th October, 2021):

The Tribunal had constituted an expert committee to assess the quantum of compensation and draw up a remediation plan for the affected area, and stopped any mining in the interim period. That committee had importantly recommended a geo-referencing of the entire area to assess impacts by drones, among various other measures to contain the spread of the waste in surrounding slopes and water bodies. The miners also moved in appeal to the Supreme Court against orders of the Tribunal for interim closure of mining activities but the appeal was dismissed.

The Tribunal noted that the amount of restoration must go beyond damage caused to agricultural yields and must also include costs of restoration of damaged environment, in line with the *Samaj Parivartana Samudaya* judgment, which required compensation to be 10 percent of the selling price of the mined material. However, in this case, the Tribunal directed the miners to pay an interim compensation of 2 crores and reconstituted the expert committee for implementation of the restoration plan. This committee now includes representatives from the CPCB, Uttarakhand SEIAA, District Administration, Pithoragarh, Uttarakhand PCB, Indian Bureau of Mines, Ministry of Mines, Soil and Water Conservation Research Centre, Dehradun, G.B. Pant National Institute of Himalayan Environment, Almora, Uttarakhand, Forest Department, Uttarakhand, Department of Forest, Uttarakhand and Department of Mines, Uttarakhand. The Tribunal also asked the Uttarakhand Government to review the mining operations in the entire state considering the ecological sensitivity and fragility of the Himalayan range. Finally, the Tribunal directed that no mining may be carried out till the entire area is restored and the victims of illegal mining are duly compensated.

b. **Review Application 41 of 2021** in Original Application 995 of 2019, Principal Bench (28th January, 2022): The application sought review of an order dated 26th October, 2021 by which the Tribunal held the review applicant liable to pay compensation for violation of environmental norms. The review applicant caused environmental damage by dumping muck in the river and failing to take any measures to prevent spillage from the pit area towards the valley. The Tribunal disposed of the application as review of it sought a re-hearing of the case, which was against the law⁵¹.



A stretch on the Udhampur-Banihal Highway depicting slippage of muck into the Tawi Google Maps

14. Amresh Singh v. Union of India, 2021 SCC OnLine NGT 274 (29th October, 2021)

dumping of muck in rivers during highway construction, continuing violation of orders of NGT, muck disposal siting, rule of law, environmental compensation, restoration, private contractors, polluter pays principle, environmental compliance monitoring panel

This case concerns dumping of muck by contractors and subcontractors of the NHAI during the process of four laning of the National Highway from Udhampur to Banihal in Jammu & Kashmir and Ladakh. The Tribunal initially restrained the contractors from any dumping in rivers Tawi and Chenab but on continuing violations, another petition was filed on the same

⁵¹ For a commentary on the review jurisdiction of the National Green Tribunal, see *Themrei Tuithung v. Union of India*, 2017 SCC OnLine NGT 967.

issue, asking for the orders of the Tribunal to be executed. An expert committee constituted by the Tribunal recommended remedial measures including stabilizing hill slopes where construction was taking place and building walls to prevent down flow of muck. The Tribunal had constituted a monitoring committee headed by a retired judge of the Jammu, Kashmir and Ladakh High Court, to ensure that remedial steps were implemented. From 2019 to 2020, the violations continued and the Tribunal responded by gradually increasing the quantum of compensation payable by the contractors on the basis of expert reports. However, the violations continued, and the Tribunal directed the monitoring committee to assess the quantum of compensation and sought personal presence of senior most officers of the NHAI. It noted the connection between ill-planned dumping sites and pollution in rivers and narrowing of river channels, and also directed the PCB to assess the change in water quality of the impacted areas of the rivers. Importantly, on noting that the violations were continuing for so long, the Tribunal found these violations to be deliberate and required a stringent response, including imposing liability on senior most officers.

The NHAI responded by initiating prosecution against the erring contractors and reopening bids for construction work. The Jammu & Kashmir State Pollution Committee responded by assessing the requisite compensation to be approximately 129 crores. During this time, it was also found that the district administration was issuing permits for hillside blasting, on a stretch of topography which was found to be particularly dangerous due to instability and rock falls. The Tribunal also refused to entertain the argument made by the Highways Authority concerning liability lying on the contractors and not the authority itself, emphasizing that the Authority is responsible for restoration albeit at the cost of contractors as per the existing legal principles of polluter pays and vicarious liability⁵².

The Tribunal directed the NHAI to set aside an amount of 129 crores for restoration of past and apprehended future environmental damage, prepare a plan for restoration within a month, and implement it within six months. Most importantly, the Tribunal directed the NHAI to constitute an internal environmental and forest clearance compliance cell reporting directly to its chairperson to prevent recurrence of such incidents for various developmental activities being undertaken by it.

⁵² Vicarious liability extends to heads of the departments under Sections 25, 26 and 28 of the NGT Act.

15. Jeewan Chandra Kashneyal v. Bhuwan Chandra Kapri, Original Application 258 of 2021, Principal Bench (9th November, 2021)

air pollution by food processing mill, operation without permit, statutory function of pollution board, suo motu action by pollution board, environmental compensation

This case concerns the operation of an Atta Chakki and Masala Udyog causing noise and air pollution in Tildhukari, Pithoragarh, Uttarakhand. According to the district administration and PCB, the unit had not been granted any permits under environmental laws for operating. Importantly, the Tribunal noted that a mere finding of operation without permit was not enough, and PCBs are under a statutory obligation to keep strict vigil and take enforcement action with respect to any activity causing or likely to cause pollution. Such action needs to be taken whether or not someone approaches them with a complaint. The Tribunal therefore directed the PCB and district administration to take action within a period of two months.

16. Qurx Pharmaceuticals v. Himachal Pradesh Pollution Control Board, Appeal 27 of 2021, Principal Bench (18th November, 2021)

effluent discharge by pharmaceutical industry, environmental compensation, polluter pays principle, calculation of compensation amount, review of order made by PCB, redetermination

This case concerns a closure notice issued by the PCB to Qurx Pharmaceuticals for discharging untreated effluents. The PCB had also sought environmental compensation of 14.5 Lakh considering the past failure of the company to respond to its show cause notices and the quantum of pollution. The company filed an appeal before the Tribunal challenging the closure and compensation order arguing that the compensation amount was decided without any basis and the closure notice was issued based on field inspection for a day when the 'evaporator' at this company's premises was not functioning and no pollution was taking place. The Tribunal noted that the company did not dispute any past pollution and its arguments did not mean that pollution did not in fact take place. Based on the record and in refusing to interfere with the basis of the order (considering that the company had not disputed past pollution), the Tribunal directed the PCB to halve the compensation sought and redetermine the entire compensation amount based on submissions of the appellant, via an

order. The reduced compensation would be used for remediation efforts. It also gave the PCB liberty to appeal against this order considering that it had been passed ex-parte⁵³.

17. Raja Muzaffar Bhat v. State of Jammu and Kashmir, 2021 SCC OnLine (25th November, 2021)

wetland identification and restoration across the nation, biodiversity, planning, solid and liquid waste, satellite mapping of wetlands, applicability of Wetland Rules, wise use of wetlands, center/state jurisdiction over wetlands, rule of law, district environmental plan

This case initially concerned unscientific dumping of waste and encroachment of Hokersar Wetland, Wular Lake and Kreentchoo-Chandhara Wetland in the Union Territory of Jammu & Kashmir and Ladakh, but its scope was later expanded to wetlands in the entire nation. Connecting this issue to the ongoing work of the Union Government in preparing a comprehensive inventory of wetlands nationally, the Tribunal referred to the M.K. Balakrishnan case in the Supreme Court.

In that case, the Supreme Court had directed the Union Government to notify the Wetland (Conservation and Management) Rules on or before 30.06.2017 and provide details of steps taken to conserve Ramsar sites in India. In the information provided, the Government mentioned 2,01,503 (each having an area greater than 2.25 Hectares) wetlands for which information had to be collected with assistance from states and union territories. Crucially, even prior to information collection, the Supreme Court directed that the Wetland Rules of 2010 be made applicable to all 2,01,503 wetlands and measures to conserve be put in place as per Rule 4 of the 2010 rules. The court expressed concerns over the delay in satellite mapping of wetlands, considering the possibility of various such water bodies disappearing altogether before the mapping process is completed.

In addition to the comprehensive directions of the Supreme Court, the Tribunal, in this case, had formed an oversight committee to assess the damage done to the three wetlands in question and suggest remedial steps. Directions were passed for an action taken report to be prepared mentioning the remedial steps taken, and also to complete the process of mapping as

⁵³ See Section 19(4), NGT Act.

directed by the Supreme Court, whilst citing judgments in the cases of *Almitra Patel, Paryavaran Suraksha Samiti, and Polluted River Stretches*.

The report submitted by the committee considering remedial steps in Jammu & Kashmir and Ladakh suggested the presence of major challenges including silting, flooding, weed infestation, and encroachment in most wetlands in that state despite these being declared as conservation reserves under the Wildlife Protection Act, 1972. Finding the report to be incomplete with respect to remedial steps proposed for these challenges, the Tribunal directed for another report to be submitted, under the supervision of the Jammu & Kashmir and Ladakh Chief Secretary.

In considering another report with respect to remedial steps and management for wetlands at the national level, the Tribunal noted the scheme of preparing 'health cards' for all wetlands mapped, and the continuing inadequacy of information collected in furtherance of directions of the Supreme Court. In this respect, the Tribunal directed for comprehensive action plans to be prepared for all 2,01,503 wetlands in collaboration with local authorities and duly submit annual status reports. Crucially, the Tribunal directed that the decision as to whether a wetland is significant or not also take livelihood sourcing, presence of replicable traditional knowledge with respect to wise use of wetlands, and the degree of enforcement action taken to manage threats to wetlands.

In response to these various directions, the Ministry of Environment and Forest as well as Jammu & Kashmir and Ladakh filed reports detailing schemes to protect wetlands, including demarcation, disbursement of funds, identification of laws applicable to different wetlands, publishing of guidelines to the 2017 wetland rules and the creation of a centralized web portal on wetlands of the country. The Government of Jammu & Kashmir and Ladakh took a stand that it will ensure implementation of action plans for wetlands within its territory on a monthly basis. However, the Ministry stated that water being subject to jurisdiction of states, cannot be regulated by the central government. The Tribunal expressed its disappointment and made it clear that the issue did not concern water alone and that environment protection was well within the domain of the central government as per Schedule 7, List 1, Entry 13.

The Tribunal noted that the list of wetlands in fact could far exceed the 2,01,503 figure provided by the Government. It directed all states to create an exhaustive inventory of all such wetlands within their territory and relay the information to the National Wetland

Authority, **irrespective of the 2.25 hectare threshold, and extend protections under the wetland rules to those.** Secondly, the Tribunal directed the Government to include wetland protection within District Environment Plans which it directed for in another case. In expressing its confidence that these measures will ensure protection of wetlands, the Tribunal disposed of the case.

18. Bhagwan Singh v. State of Uttarakhand, Appeal 26 of 2021, Principal Bench (30th November, 2021)

improper siting of waste treatment facility, eco-fragile region, scope of appellate powers of NGT, threshold for setting aside environmental clearance

This case concerns an appeal against an environmental clearance granted for purposes of a common bio medical waste treatment plant in Kodarna, Garhwal, Uttarakhand. According to the petitioner, the facility had been proposed based on misleading information⁵⁴ particularly with respect to proximity to forests, water bodies, habitation, school, and panchayat house. The petitioner also raised the issue of wrong disclosure of geo coordinates and encroachment on government land.

The Tribunal found the appeal to be without merit considering the importance of a biomedical treatment facility. According to the Tribunal, there are bound to be sensitive locations near a proposed plant. As long as there is no prohibition on construction, there can be no case for violation of siting norms. The Tribunal also noted that the issue of geo coordinates was too technical, and those of objections from gram panchayat and encroachment on government land were to be dealt with appropriate authorities, and did not form ground for interfering with the environmental clearance.

(Continued)

⁵⁴ For a recent commentary on misleading information and the environmental clearance process, see *University of Delhi v. Ministry of Environment, Forest and Climate Change, Appeal 17 of 2021*.

19. Capt. P. C. Bhandari v. Rameshwar Sharma, Original Application 315 of 2021, Principal Bench (3rd December, 2021)

construction of rice mill, planning

The case of the petitioner was that a rice mill was constructed in Paonta Sahib without following requisite environmental norms. The Tribunal noted lack of any information on a master plan specifying the locations of rice mills and also that the food market in which the mill was being constructed was not in an industrial area. While refusing to interfere at this stage, the Tribunal clarified that any construction needs to be compliant with environmental norms and that the petitioner was free to take action before concerned authorities and take legal remedies in accordance with law.

20. Abdul Majeed Najar v. Umar Soil and Constructional Works, Original Application 331 of 2021, Principal Bench (7th December, 2021)

construction of road in forest area, grazing/common land, Pradhan Mantri Gram Sadak Yojna, public interest, threshold under Section 14, due process

This case concerns a permit given for construction of a road from Thune to Baddi in Ganderbal, on common (grazing) land⁵⁵, which, according to the petitioner, was a forest area. According to the petitioner, a tender was issued even before any permits were granted under the Forest (Conservation) Act, 1980. The Tribunal refused to interfere with the construction considering that the road was for a public utility purpose under the Pradhan Mantri Gram Sadak Yojana, and that there was lack of clarity as to whether the land involved was forest land. The Tribunal however directed the Forest Department of Ganderbal to ensure that due process of law be followed if forests are involved.

(Continued)

⁵⁵ For a recent commentary on encroachment of grazing land, see *Rameshbhai Virabhai Chaudhari v. State of Gujarat*, Civil Appeal No. 5135 of 2021, order dated 6th September, 2021.



Open solid waste dumping in hill stations such as Kullu and Manali Kanika Bansal for Wire

21. Court on its Own Motion v. State of Himachal Pradesh, Original Application 389 of 2018, Principal Bench (22nd December, 2021)

planning in Manali and Rohtang Pass areas, carrying capacity, vehicular impact, solid and liquid waste, air pollution, eco fragile area

The issue for consideration is the remedial steps for maintaining ecology in the area of Manali and Rohtang Pass in Himachal Pradesh. In the light of the previous directions by the tribunal regarding the development of solid waste management facility at Manali, Construction of Eco-friendly markets at Marhi, Upgradation of existing Sewage Treatment plants, establishment of electric buses, installation of weigh in motion, keeping a check on vehicular emission, the Tribunal was in the view that the authorities should continue to monitor the remedial steps for maintaining the ecology in Manali and Rohtang Pass in Himachal Pradesh. It reiterated that a constant vigil is required by ground level authorities in addition to supervision of and coordination with higher level authorities to ensure protection of the ecology.

(Continued)

22. Ishlam Deen v. State of Himachal Pradesh, Original Application 220 of 2020, Principal Bench (Connected matters)

noise pollution by mobile tower, proximity to habitation, scope of consent mechanism for diesel generator sets, review powers of NGT, individual grievance

The application was filed to seek an execution of order dated 19th October 2020 in Original Application 220 of 2020 which had directed the H.P. State PCB to look into the noise pollution created as a result of setting up a mobile tower in Post Gummar Village, Jwalamukhi Tehsil, Kangra District and take appropriate measures in accordance with CPCB guidelines on the subject.

- a. **Execution Application 27 of 2021** in Original Application 220 of 2020, Principal Bench, 2022 SCC OnLine NGT 8 (3rd January, 2022): The petitioner had alleged that no action was taken in pursuance of the order passed in Original Application 220 of 2020. In the report submitted by the State PCB, the mobile tower in question was installed with a backup DG set (Diesel Generator) with the capacity of 10 kilo-volt amperes (kVA) in case of power failure. In accordance with the issue of grant of consent to a DG set, according to the CPCB, a stand-alone DG set having total capacity less than 1 mega-volt ampere (MVA) equipped with acoustic enclosures alongside appropriate stack height are exempted from the consent management mechanism⁵⁶. The DG set in question is less than 1 MVA and has been provided with an acoustic enclosure and exhausted muffler and therefore it did not fall under the consent mechanism of the State PCB. Additionally, the results from the noise and ambient air monitoring were found within the prescribed limits. As the report submitted was not contested by either of the parties, the Tribunal did not deem any action necessary.

- b. **Review Application 7 of 2022** in Execution Application 27 of 2021 in Original Application 220 of 2020, Principal Bench (6th April, 2022): This issue was earlier heard by the tribunal at two different stages including via an execution petition, since it had remained unresolved. On the latter occasion the Tribunal had disposed of the matter considering a report which suggested that the noise levels were within permissible limits. The petitioner had not contested the report then, however, filed a 'review' petition against

⁵⁶ See Modified directions to SPCBS/PCCc on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories dated 7th March, 2016, at page 49.

that order on this occasion. The Tribunal refused to entertain the petition considering the fact that the petitioner was seeking 'rehearing' in the garb of review, which is a narrow remedy under law. However, the Tribunal clarified that it was open for the petitioner to approach the magistrate concerned under the criminal procedure code considering the individual nature of the grievance at hand⁵⁷.

23. Vippin Nayar v. Union of India, 2022 SCC Online NGT 9 (3rd January, 2022)

construction in river floodplain, untreated waste, exception to no-construction on floodplain principle

The application was against the construction activities in the flood plain zone of river Ganga. The Municipal Corporation, Rishikesh has been constructing toilets in the said area and discharging untreated waste into the river.

The district magistrate, Dehradun in his report has mentioned that the public toilet is under construction at a distance of 20.77 m from Ganga. Due to the lack of a sewer line, a septic tank has been constructed to collect the waste. The construction is almost completed but the work has been suspended in light of the order of the Tribunal. The washrooms were being constructed for visitors of Astha Path. The Tribunal did find merit in the objections filed by the petitioner but in the light of lack of available sanitary services for the public visiting the place, it ruled that the arrangement should be interim and not be treated as a precedent⁵⁸. The washroom should be shifted to an appropriate location where construction is legally allowed. Till an alternative arrangement is made, septic tanks should be regularly cleaned and maintained to ensure that no untreated sewage is discharged into the river.

(Continued)

⁵⁷ See generally, Section 25(2), NGT Act.

⁵⁸ For precedent on the issue of construction on floodplains of the Ganga and rivers in general, see *M.C Mehta v. Union of India*, (2017) SCC OnLine NGT 1980 and *Paryavaran Suraksha Samiti v. Union of India*, (2017) 5 SCC 326.

24. Chaitanya Bhandari v. Uttarakhand Environment Protection and Pollution Control Board, 2022 SCC OnLine NGT 12 (12th January, 2022)

dumping waste in river, burning of waste, planning, funds for waste treatment, environmental compensation, air pollution, public health, bioremediation, state wide applicability

The application was brought against the violation of Solid Waste Management Rules 2016 at Garsain, Chamoli District. The dumping ground is 10 m from the Ram Ganga River, as against the prescribed distance of 100 m. The waste is falling into the river and it's also being burnt. The unscientific disposal has invited scavengers and is contributing to spread of diseases.

The Secretary, Urban Development, Uttarakhand in their submission has maintained that the waste disposal system has been upgraded and is in process of being installed in 88 out of 100 municipalities. The bench directed that the monitoring of the upgradation should be at 3 levels - Municipal Councils, District Magistrates and Director, Urban Development. The monthly proceeding as a result of monitoring shall be uploaded on the website of Urban Development. Additionally, the compliance of Solid Waste Management Rules may be ensured by the concerned statutory authorities. It added that towns with less than one lakh population and particularly, located on hilly terrain need to adopt standardized waste processing packages and residue/rejects ought to be properly managed. The State Urban Development Department needs to set up a mechanism at District level for setting up of waste recycling systems to follow environmentally safe practices.

25. Team Taoveda Dimensions NGO v. Union of India, 2022 SCC OnLine NGT 18 (24th January, 2022)

tunneling in mountainous area, fragile mountains, felling of trees, threshold under Section 14 of NGT Act

The complaint was filed against the 2.74 km long tunnel project in Mussoorie. The area near the tunnel was an earthquake sensitive zone and for the completion of the tunnel, the authorities would have to cut around 3000 deodar and oak trees.

However, the Tribunal disposed of the application as it did not give details or particulars of the authorities carrying out the above alleged construction.

26. Pyar Singh v. State of Himachal Pradesh, Original Application 424 of 2021, Principal Bench (25th January, 2022)

dust and noise pollution by woodworking machines, public health

The application was filed against the heavy woodwork machines that operated day and night in Santhal, Mandi District. The petitioner stated that the continuous work generated dust and noise pollution. Additionally the smell of the painted wood is a serious health hazard to locales. The Tribunal directed the State PCB, Superintendent of Police at Mandi District and the District Magistrate at Mandi to look into the matter and take remedial action.

27. Mahila Mandal v. State of Himachal Pradesh, Original Application 448 of 2021, Principal Bench (27th January, 2022)

encroachment in forest, soil erosion

The application was filed against encroachment of forest land and destruction of trees by one Vijay Kumar in Chamba District. The petitioner also stated that the forest department refused to take action when the same was brought to their notice. The Tribunal directed the DFO, Chamba district to take appropriate remedial action.

28. Champa Thakur v. State of Himachal Pradesh, Original Application 32 of 2022, Principal Bench (31st January, 2022)

unauthorized construction in mountainous area, construction in public forest, blocking of water stream

The petitioner reported an unauthorized construction of a steel structure in a government forest in Lower Ram Nagar, Shimla which was restricting a water stream. The petitioner alleged that this 300 meter long construction is for the purpose of creating a path to a private building. The Tribunal directed the DFO, Shimla to look into the matter and take required remedial action.

29. Rajinder Kaur v. Union of India, 2022 SCC OnLine NGT 54 (9th February, 2022)

illegal stone crushing, public health, siting criteria for stone crushers

The application was brought against illegal stone crushing operations conducted within the prohibited distance from the Abadi Deh village in Mohal Piplu and Mauja Guglehar, Una District. According to the report submitted by the joint committee of State PCB and SDM, Una, the operation was 502 meters away from the revenue village⁵⁹ which was beyond the prescribed distance. In the view of the above, the Tribunal found that norms in regard to control of noise and ambient air quality need to be duly followed.

30. Usha Chand v. State of Himachal Pradesh, Original Application 283 of 2021, Principal Bench (10th February, 2022)

pollution caused by furnace, public health, emission standards for industrial area

The application was filed raising issues of air and noise pollution by Goyal Furnace in Sansarpur Terrace, Kangra District. The Tribunal had previously asked the State PCB to look into it and report back. The state PCB in its report mentioned that ambient air quality monitoring and noise monitoring were under the prescribed limit. The Stack Monitoring result was above the prescribed limit for which the unit was given 15 days to make the due changes. The inspection after 15 days gave satisfactory results for stack monitoring. As the remedial actions were already taken by the State PCB, the Tribunal disposed of the application.

(Continued)

⁵⁹ For an interpretation of ‘village’, see Des Raj v. State of Himachal Pradesh, 2012 SCC OnLine HP 3415.

31. Joginder Bhandari v. Union Territory of Jammu and Kashmir, 2022 SCC OnLine NGT 66 (17th February, 2022)

muck dumping at hydroelectric project site, blockage of water stream, road construction, liability for past actions, polluter pays principle, environmental compensation, District Environment Plan

The application was brought against unscientific muck dumping in Arzi Nallah by AFCONS Infrastructure limited and L & T limited at Pakal Dul Hydroelectric Project in District Kishtwar, Jammu & Kashmir and Ladakh resulting in damage to the environment. The project is one of ten such projects in the works in Himachal Pradesh and Jammu & Kashmir and Ladakh amounting to a total of 6.8 Giga Watts. On the basis of the reports submitted by the state PCB, the Tribunal came to a conclusion that illegal muck dumping was taking place on the bank of the drain, obstructing its natural course. The Tribunal noted that mere undertaking to not dump further muck did not account for past violations. Further, the wire crates used for preventing muck dumping which may not be adequate to remedy the situation. The Tribunal directed both AFCONS and L&T to deposit Rs 1 Crore each with the state PCB to be utilized for restoration of the damaged environment.

32. Satish Chander Singh v. Uttarakhand Environment Protection and Pollution Control Board, 2022 SCC OnLine NGT 71 (22nd February, 2022)

illegal operation of hot mix plant, public health, agriculture, habitation, air pollution, absence of siting criteria, precautionary and sustainable development principles

The grievance in this original application was against violation of environmental norms in the operation of a hot mixture plant by K.B.M Infrabuild Pvt. Ltd in Nandauli Village, Pauri Garhwal. The petitioner has complained about the lack of action by the District Magistrate about the deficiencies in the plant. As the plant was no longer operational, the Tribunal directed the State PCB to lay down siting and other norms for the hot mixing Plant and ensure that the existing and the new norms are being complied by such plants in the state.

(Continued)

33. Jagdish Chandra Pandey v. State of Uttarakhand, Original Application 197 of 2020 (25th February, 2022)

Construction of road in mountainous area, felling of trees, muck dumping in forest, polluter pays principle, environmental compensation, blocking of water streams

This case concerns violation of environmental norms during construction of Kotila-Gawad-Suraikhet Motor Road in Tehsil Dwarahat, District Almora, Uttarakhand. The petitioner alleged that a large number of trees are being damaged in the process by the concessionaire. On directions by the Tribunal, the PCB filed a report finding that trees had been cut and muck disposed of illegally, and local biodiversity threatened. The report assessed the environmental compensation to be more than Rs. 60 L. Based on the report, the Tribunal directed the Principal Secretary, Forest Department of Uttarakhand to undertake further restoration work with respect to forests and water courses damaged and sites impacted by muck disposal.

34. In re: News item published in The Tribune dated 22.02.2022 titled “7 killed in blast at firecrackers factory in Himachal Una, Original Application 143 of 2022, Principal Bench (8th March, 2022)

death and serious injury due to blast, hazardous substances, explosives, industrial accidents, absolute liability, public trust doctrine, environmental compensation, *parens patriae*, restitution, ex-gratia payment

This case concerns a large number of deaths and injuries caused in part due to violation of key environmental norms relating to hazardous chemicals at a firecracker factory in Una, Himachal Pradesh. The PCB found the operation of the factory to be completely illegal under environmental and various other laws. The Tribunal recalled more than a dozen recent cases dealing with industrial accidents wherein it had imposed a flat compensation rate of 20 Lakh Rupees per deceased individual in line with the principle of absolute liability⁶⁰. It imposed the same in this case in addition to criminal liability and other payments made ex-gratia⁶¹.

⁶⁰ See M.C Mehta v. Union of India, (1987) 1 SCC 395.

⁶¹ [*Latin* "by favor"] As a favor; not legally necessary. - Also termed a gratia, Black's Law dictionary, 9th Edition.

35. In re : News item published in The Hindu dated 27.02.2022 titled “Tourism has brought economic prosperity to the Himalayan region, but the environmental cost has been catastrophic”, 2022 SCC OnLine NGT 87 (9th March, 2022)

eco sensitive region, unregulated tourism, sustainable development principle, solid waste, groundwater contamination, air pollution, public health, burning of waste, carrying capacity

This case concerns the broad issue of large scale pollution attributable to tourism in the 12 Himalayan states of India. It was taken up by the Tribunal based on a news report published on this issue mentioning that tourism alone creates 8 million tons of waste annually in these states each year. The Tribunal directed the G.B. Pant National Institute of Himalayan Environment, Almora to work with the administration of each of these 12 states, taking into account judgments passed with regard to individual mountain zones in the past, and report with detailed plans within 6 months.

36. Kamal Kishore Kandpal v. State of Uttarakhand, Original Application 156 of 2022, Principal Bench (9th March, 2022)

illegal chalk mining, agriculture, individual grievance

This case concerns illegal mining allegedly damaging agricultural land in Bakhet, Bageshwar, Uttarakhand. The Tribunal refused to entertain the case since it did not involve environmental issues and appeared to be a private dispute concerning agricultural land.

37. Gulshan Kumar v. State of Himachal Pradesh, Original Application 213 of 2022, Principal Bench (31st March, 2022)

debris outflow due to construction of road, biodiversity, restoration, blasting

This case concerns blasting in the process of road construction at Kamalah, Mandi, Himachal Pradesh. The petitioner alleged that this blasting is adversely affecting the flora and fauna of the region. The Tribunal directed the District Magistrate to take remedial action and remove unscientifically dumped debris.

38. People's Union of Legal Rights v. Principal Chief Conservator of Forests, Original Application 214 of 2022, Principal Bench (31st March, 2022)

management of trees by the forest department, marking, felling and transporting trees, threshold under Section 14 of NGT Act, determination by a High Court, challenge to a non-schedule I executive instrument, management plan for Acacia trees, agriculture

This case concerns a challenge to an order passed by the Government of Jammu & Kashmir and Ladakh with respect to marking, felling and transportation of trees. Via that order, the Government permitted Forest Department officers to remove Khair or Acacia trees from farmland under a management plan for forests of the region, which had expired earlier in 2016. The order made an extension to that plan to allow for the removal mentioned. Earlier, the High Court at Jammu & Kashmir and Ladakh had not found it necessary to pass directions concerning this issue. The Tribunal found that there was no substantial question relating to the environment⁶² and as such, the High Court had already gone through the matter and correctly found the matter to have been dealt with under the Jammu & Kashmir Non-Forest Land Khair Trees 'Acacia Catechu' (Management Plan) Rules 2016.

(Continued)

⁶² For a commentary on the scope of “substantial question related to the environment”, see *Techi Tagi Tara v. Rajendra Singh Bhandari*, (2018) 11 SCC 734.



Industrial pollution in Baddi Tribune India

39. Veterans Forum for Transparency in Public Life v. State of Himachal Pradesh, Original application 136 of 2020, Principal Bench (Connected matters)

river pollution in industrial area, antimicrobial resistance, antibiotics, liquid waste, biodiversity, review powers of NGT, enforcement of draft notification by NGT, planning, outdated technology, water bodies, drug standards, public health, national security, market competition, active pharmaceutical ingredients

This case concerns pollution of rivers Balad, Sirsa and Sutlej in Baddi Industrial area in Solan District of Himachal Pradesh⁶³.

- a. **Original Application 136 of 2020**, Principal Bench (6th April, 2022): The facts demonstrate two broad issues - (a) the risk of antimicrobial resistance (AMR) developing as a result of discharge of large amounts of active pharmaceutical ingredients (API) in

⁶³ For detailed coverage on the issue of effluent discharge in the Baddi Industrial Area, *see* article titled “Living in toxicity: Industrial Pollution in Himachal Pradesh’s Baddi”, available [here](#).

water bodies, and (b) the inability of Common Effluent Treatment Plants and Industrial units to treat effluents before discharge into water bodies. These issues were exacerbated due to the lack of effluent standards developed by the CPCB, monitoring by PCBs concerning violations, and creation of new classes of effluents due to mixing, which were not predicted by existing law and technology. In the meantime, at the instance of the Tribunal, expert reports from the CPCB and MoEF led to guidelines and standards to tackle these complex issues. The Tribunal reiterated its earlier directions that defaulting industries are to be closed and held accountable under law by the PCB. It also took a serious view on the absence of standards for certain pharmaceutical compounds (even in the final notification developed by the MoEF during the course of the proceedings) and directed that "pending finalization by the MoEF&CC, standards proposed in the draft Notification dated 23rd January, 2020, which are based on expert studies, be strictly followed by all concerned". Finally it directed PCBs across India to strictly abide by the CPCB guidelines to tackle such issues developed in 2022 particularly with respect to "monitoring of API and assess Predicted No-Effect Concentration (PNEC) values" and for effluent treatment plants to be suitably upgraded.

- b. **Review Application 14 of 2022** in Original Application 136 of 2020, Principal Bench (24th May, 2022): This case concerns a judgment concerning dumping of pharmaceutical waste in rivers by industries in Baddi Industrial Area. In that judgment, the Tribunal had directed the enforcement of draft standards with regard to active pharmaceutical ingredients and other compounds, in light of the alarming state of affairs and risk of resistant pathogens developing due to contact with these effluents. The draft standards developed by the Ministry of Environment, Forest and Climate Change had not yet been finalized due to various issues including market pressures and competition with the Chinese pharmaceutical market. The Ministry approached the Tribunal seeking a review of its judgment on the ground that the Tribunal could not have enforced draft standards. The Tribunal rejected the application stating that a rehearing of the matter could not have been permitted based on a review application and more importantly, it had the jurisdiction to enforce principles of sustainable development under law, even if these were beyond⁶⁴ decisions made by the Ministry. The Tribunal relied on a 2019 Supreme Court judgment to substantiate its reasoning, where its wide ranging powers were upheld by the court.

⁶⁴ For a recent commentary on the powers of the NGT, see *Madhya Pradesh High Court Advocates Bar Association v. Union of India*, 2022 SCC OnLine SC 639.

40. Rita Sharma v. State of Himachal Pradesh, Original Application 5 of 2020, Principal Bench (7th April, 2022)

solid waste mismanagement, burning waste, air pollution, public health, forest fires, biodiversity, livestock, irrigation, water bodies, scavengers, segregation of waste, legacy waste, remediation

This case concerns mismanagement of legacy waste which is being burnt, causing air pollution, resulting in diseases, loss of livestock and contributing to forest fires and loss of wildlife in Dughneri, Hamirpur, Himachal Pradesh in violation of the Air and Water Acts. According to the petitioner, this is leading to an increase in the population of monkeys, feral dogs and scavengers namely crows and vultures. Due to the gradient of the terrain, water flowing through these sites is getting contaminated and in turn contaminating surrounding water bodies which are also used for agricultural purposes. On account of multiple failures by the state administration, the Tribunal had directed the Principal Secretary of Urban Development to remain in person and show cause as to why violations were continuing, on the last date of hearing. The Secretary and Municipal Council had also filed detailed reports (see also) in the meanwhile, stating in sum that work of crucial measures including construction of retaining wall, storm water drain, covering of solid waste treatment facility, fencing, road, water pump and allied facilities was completed.

The Tribunal, on going through these reports found that (a) the waste itself remained unremediated due to lack of segregation at source, (b) construction of storm water drain was not in conformity with local terrain, and (c) suboptimal use of compost pits. The Tribunal also remarked on the inconsistent solid waste treatment policy at the state level leading to Municipal Councils having their own way. The Tribunal directed the State to file further remedial measures with the registry, and that if necessary the registry may place the issue before it for consideration.

(Continued)

41. Bharti Kawatra v. Uttarakhand Tourism Development Board, Original Application 218 of 2022 (8th April, 2022)

road construction without permit, encroachment of private property

This case is the third in a row of cases brought before the Tribunal raising the issue of road cutting without any permits in Mussoorie, Dehradun. The first and second time around, this issue was closed considering a report which stated that no new construction was taking place. The petitioner then filed a civil suit before the Civil Judge at Dehradun and obtained a report confirming new construction. The petitioner also stated that her private property was being encroached in the process. Therefore, she stated that the reports submitted to the Tribunal earlier were incorrect. However, the issue which then arose was whether a new case could be filed asking the Tribunal to review its earlier orders, answered in the negative by the Tribunal. However, the petitioner was granted liberty to take a suitable remedy available under law.

42. Rakesh Verma v. State of Uttarakhand, 2021 SCC OnLine NGT 261 (21st April, 2022)

setting up of petrol pump without permits, siting criteria for petrol pumps, habitation, application of mind by pollution board

This case concerns the construction of a petrol pump and retail outlet by Reliance BP Mobility Ltd. and Mussoorie Development Authority at village Ajabpur Kalan, Dehradun. The petitioner had filed an objection to the No Objection Certificate application made for the purpose of this complex before the PCB on the public health grounds concerning the residential area surrounding the concerned location. When the authorities failed to respond, the petitioner had approached the Tribunal raising the same issues. The counsel for Reliance BP Mobility Ltd. had then stated that there is no violation of the NOC. The Tribunal then refused to take up the issues raised asking the petitioner to raise them before the PCB and challenge any illegal permits in accordance with law⁶⁵.

The petitioner now states that within four days of the order of the Tribunal, the PCB had granted NOC for the petrol pump without any application of mind. Crucially, the petitioner

⁶⁵ Refer to provisions constituting appellate authorities created under Air (Section 31) and Water (Section 28) Acts.

stated that the project map was cleared by the planning authority without any scrutiny⁶⁶ despite holding back other projects for want of information on residential areas. The Tribunal therefore constituted a committee of PCB and District Magistrate, Dehradun to verify the allegations. The committee reported that the PCB had suggested the District Magistrate to cancel the NOC. The Magistrate has themselves found that the project was located in violation of CPCB guidelines for petrol pumps. Based on this information, the Tribunal disposed of the matter directing the authorities to take remedial action in accordance with law.

43. D.V Girish v. Union of India, 2022 SCC OnLine NGT 117 (21st April, 2022)

conservation planning in protected areas, carrying capacity, eco sensitive and eco fragile areas, merit review by NGT, precautionary principle, identification of eco sensitive and eco fragile areas

This case concerns the carrying capacity assessment of eco-sensitive zones (ESZ) and eco fragile areas (EFA) across the country⁶⁷. The issue itself was resolved by the Tribunal with directions to the MoEF, CPCB and concerned states and union territories to conduct a carrying capacity study of at least one eco-sensitive area per state/union territory. The order of the tribunal cited various carrying capacity assessments done, including those for major cities in Himachal Pradesh such as Dharamshala, Kasauli and Manali. The Tribunal noted that the form of those studies may be considered in the process of assessing capacity at a national level.

In compliance with the orders of the Tribunal, CPCB filed a carrying capacity study for Sanjay Gandhi National Park (“SGNP”) in Mumbai in compliance with those directions, hence this case. The assessment itself was carried out by CSIR-NEERI, and identified 106 national parks for the purpose of undertaking carrying capacity study. Crucially, the report noted that the studies for the remaining national parks may follow the template applied to SGNP. The report also suggested strict adherence to pollution and planning norms to be enforced by the forest departments, PCBs, and state and union territory administrations.

⁶⁶ See *Techi Tagi Tara v. Rajendra Singh Bhandari*, (2018) 11 SCC 734. See also, generally, *T.N Godavarman Thirumulpad v. Union of India*, 2022 SCC OnLine SC 716.

⁶⁷ See report titled “India’s Notified Ecologically Sensitive Areas (ESAs): The story so far ...”, available here.

The Tribunal found various inadequacies in the report including those with respect to assessment of socio economic, tribal, wildlife, disaster management, and sustainable eco-tourism issues. Of utmost importance is the fact that the Tribunal noted the need for carrying capacity assessments to be done "for ecologically sensitive areas not notified as such but providing significant ecological services needing protection from activities which may need to be prohibited or regulated on the concept of sustainable development⁶⁸". The Tribunal established a '**likelihood**' threshold for threats to any such area, from any unregulated or unsustainable activities. The threats indicated by the Tribunal included "hazardous activities like mining and quarrying, stone crushers, encroachment and excessive constructions, excessive tourism, activities in conflict with wildlife habitats".

Based on these observations and the report placed on record, the Tribunal directed the MoEF to get conservation plans prepared for all the Notified ESZs and EFAs, specifying prohibited/regulated activities within specified distance from core areas. The Tribunal also directed all Chief Secretaries to "identify ESZs and EFAs for preparing and regulating conservation plans and take further measures accordingly".

(Continued)

⁶⁸ See generally, article titled "Safeguarding wildlife beyond protected areas in India: A review of laws, policies and other conservation tools", available [here](#).



Map of locations of fires in Uttarakhand over one day, 2014

Jackson Institute of Global Affairs

44. In re : News item published in Hindustan dated 21.04.2022 titled “Village in danger due to fire in forest”, Original Application 301 of 2022, Principal Bench (29th April, 2022)

forest fires, biodiversity, habitation, disaster management, frontline firefighter training, satellite mapping, compensatory afforestation funds, statewide issue

This case concerns the issue of forest fires in the Champawat division in Uttarakhand and the impact on habitation, biodiversity and environment therein. The Tribunal noted the need to take remedial action, prevent future fires and rehabilitate those impacted. It noted the presence of various systems in place to tackle forest fires, including the National Action Plan of Forest Fires (“NAPFF”) and Central Sponsored Forest Fire Prevention and Management (“FPM”) Scheme. The Tribunal went on to cite its previous order concerning the issue of forest fires, wherein it highlighted the need to strengthen the personnel force responding to these fires, and assess loss caused by garnering financial resources including those in CAMPA funds. The Tribunal had also then emphasized on the list of forest fire hotspots

created using satellite mapping and the need for state forest departments to curb forest fires. In continuation of that order, the Tribunal directed the Secretary of Forests for Uttarakhand to look into the situation, take action to rehabilitate affected persons and restore the area concerned, while utilizing CAMPA⁶⁹ funds available with the state if required. While disposing the case, it left it open for any aggrieved⁷⁰ party to take remedy as per law.

45. Naveen Rana v. State of Uttarakhand, Original Application 296 of 2022, Principal Bench (5th May, 2022)

commercial construction near river

This case concerns the construction of shops at Swarg Ashram, at a distance of 100 meters from the Ganga without any construction plan authorization and in violation of orders of the Tribunal⁷¹ and Uttarakhand High Court. The Tribunal constituted a committee of the PCB and District Magistrate, Pauri Garhwal to look into the grievances of the petitioner, and take suitable remedial action.

46. Tejinder Kumar Jolly v. State of Uttarakhand, Original Application 449 of 2019, Principal Bench (10th May, 2022)

illegal operation of stone crushers, judicial review of NGT order, retrospective application of siting criteria, right to life, groundwater, environmental compensation

This case was remanded to the Tribunal by a judgment of the Supreme Court on grounds of failure to consider issues concerning illegal stone crushing on merit. The case concerns operation of stone crushers in close proximity to schools and residential areas in Haldwani. The main issue before the Tribunal for consideration was whether siting criteria applicable on stone crushers had a retrospective effect. In its judgment, the Supreme Court, relying on an earlier judgment of the Tribunal answered in the affirmative. The Tribunal concurred, and held that the siting criteria would apply to the concerned stone crushers, which had been established in 1985. This, according to the Tribunal would be necessary to enforce the

⁶⁹ See Rule 5, Compensatory Afforestation Fund Rules, 2018.

⁷⁰ (Of a person or entity) having legal rights that are adversely affected; having been harmed by an infringement of legal rights, Black's Law dictionary, 9th Edition.

⁷¹ M.C Mehta v. Union of India, (2017) SCC OnLine NGT 1980.

fundamental right to life of habitants proximate to the units. The Tribunal also cited the precautionary and sustainable development principles in support. The Tribunal directed the PCB and District Magistrate of Nainital to enforce its directions restraining operation of stone crushers concerned. It also directed the PCB to assess damage caused and recover compensation for illegal extraction of groundwater.

47. Pramod Kumar Sharma v. Uttarakhand Environment Protection & Pollution Control Board, Original Application 316 of 2021, Principal Bench (18th May, 2022)

illegal operation of automobile service stations, application of mind by pollution board, collusion

This case concerns the continuing illegal operation of an automobile service station in Jwalapur, Haridwar. This issue was reopened for consideration due to the continuing operation of these units despite an undertaking indicating otherwise by the PCB. The Tribunal expressed its disapproval of the way the PCB let the units operate despite clear findings of violation of the law. The Tribunal also noted the continuing discrepancies between these clear findings and oral statements made by the Member Secretary of the PCB that the unit was allowed to continue after the stoppage of the water and electricity connection. In the face of these facts which suggested collusion between the unit and the Board, the Tribunal directed the Chief Secretary of Uttarakhand to look into the conduct of the Member Secretary of the Board and ensure that important positions are manned by people who are 'above board' in dealing with the Tribunal.

48. Shivalik Emerald Hills Residents Welfare Society v. Department of Forest, Uttarakhand, Original Application 215 of 2021, Principal Bench (18th May, 2022)

retaining wall, encroachment in forest land, riverbed, demolition

This case concerns encroachment of forest land in Malsi Forest in Bindal Rao in Rajpur Area, Dehradun. At an earlier occasion, the Tribunal had directed the Forest Department, District Magistrate, Dehradun and SEIAA, Uttarakhand to ascertain the factual situation on ground. The joint committee confirmed in so far as that the private owners concerned had indeed caused an encroachment by constructing a retaining wall in land also registered as riverbed and that such encroachment had been removed via demolition. However, the committee did

not find any forest to be encroached upon. The Tribunal found that no further orders were called for and disposed of the case.

49. Acharya Shri Chander College of Medical Sciences & Hospital v. J & K Pollution Control Board, Appeal 21 of 2022, Principal Bench (23rd May, 2022)

biomedical waste mismanagement, past violations, powers of pollution board, environmental compensation

This case concerns mismanagement of biomedical and general waste by a medical college and hospital in Sidhra, Jammu, Kashmir and Ladakh. The PCB had earlier in 2012 conducted an inspection wherein various deficiencies in treating waste were found including with respect to sewage and effluent treatment, incineration, dumping on slopes and emissions. From 2013-19, the College, via various letters, represented before the Board that it had been taking various remedial measures. However, based on photographic evidence, the Board, via a notice in 2020, imposed an environmental compensation of Rupees 1,37,34,800 on the College also citing no change in ground evidence. The College then filed an appeal against these directions before the appellate authority of the board on the ground that photographic evidence should not have been acted upon. That authority upheld the imposition of environmental compensation. The college took the ground that it had been taking remedial measures and that imposition of compensation based on photographic evidence was erroneous, before the Tribunal. The Tribunal rejected these contentions stating that there was no dispute with regard to past violations and in light of verified ground information. Importantly, the Tribunal found that the college would be liable for any default of a waste treatment agency appointed by it.

50. Chief Executive Officer, Municipal Council, Sopore v. J & K Pollution Control Board, Appeal 23 of 2022, Principal Bench (25th May, 2022)

solid Waste dumping in ecologically sensitive area, forest land, river floodplain, environmental compensation, wetland, District Environment Plan, review of order passed by pollution board, pendency of issue in High Court

This case concerns illegal and unscientific dumping of solid waste by the Municipal Council, Sopore, in forest land, on flood plain of Jhelum and buffer zone of Wular lake. The PCB

levied an environmental compensation of Rupees 1,30,46,000 as a result. The Council responded stating that the dumping was not taking place of forest land, water from the site could not physically reach the Wular lake and untold damage to the people of Sopore would be caused in light of no suitable alternate land. The Board rejected these contentions citing the unscientific manner of dumping, that too in low lying land. The Board also held that mere pendency of these issues before the High Court of Jammu & Kashmir and Ladakh did not preclude an order seeking environmental compensation particularly considering the ground situation⁷². The Tribunal concurred with the viewpoint of the Board, finding a clear violation of the Solid Waste Rules, 2016. The Tribunal found no ground to interfere with the order seeking compensation and directed the said amount to be utilized for restoration of the environment as per the District Environment Plan for the area (developed due to direction passed in another judgment).

(Continued)

⁷² See generally, *State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru* (M.P.), 2022 SCC OnLine SC 728.

Index of Supreme Court Cases cited

1. M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395
2. Almitra H. Patel v. Union of India, (2000) 2 SCC 679
3. Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169
4. State Bank of India v. S.N. Goyal, (2008) 8 SCC 92
5. Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338
6. Sterlite Industries (India) Ltd. v. Union of India, (2013) 4 SCC 575
7. Samaj Parivartana Samudaya v. State of Karnataka, (2013) 8 SCC 154
8. M.K. Balakrishnan v. Union of India, (2017) 7 SCC 805
9. Paryavaran Suraksha Samiti v. Union of India, (2017) 5 SCC 326
10. M.C Mehta v. Union of India, (2017) SCC OnLine NGT 1980
11. TechI Tagi Tara v. Rajendra Singh Bhandari, (2018) 11 SCC 734
12. Goel Ganga Developers India (P) Ltd. v. Union of India, (2018) 18 SCC 257
13. Himachal Grit Udyog v. Union of India, Civil Appeal 94 of 2019
14. Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494
15. Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401
16. Citizens for Green Doon v. Union of India, (2021) SCC OnLine SC 1243
17. Citizens for Green Doon v. Union of India, (2021) SCC OnLine SC 1074.
18. Municipal Corporation of Greater Mumbai v. Ankita Sinha, (2021) SCC OnLine SC 897
19. Rameshbhai Virabhai Chaudhari v. State of Gujarat, Civil Appeal No. 5135 of 2021
20. H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309
21. Tejinder Kumar Jolly v. State of Uttarakhand, (2021) SCC OnLine SC 1077
22. NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566
23. T.N Godavarman Thirumulpad v. Union of India, (2022) SCC OnLine SC 583
24. M/s Pahwa Plastics v. Dastak NGO, (2022) SCC OnLine SC 362
25. Madhya Pradesh High Court Advocates Bar Association v. Union of India, 2022 SCC OnLine SC 639
26. T.N Godavarman Thirumulpad v. Union of India, 2022 SCC OnLine SC 716
27. Citizens for Green Doon v. Union of India, Civil Appeal Nos 2570-2571 of 2022
28. State of Andhra Pradesh v. Raghu Ramakrishna Raju Kanumuru (M.P.), 2022 SCC OnLine SC 728

