

# LEGALFOXES LAW TIMES

## Role of the National Green Tribunal in Regulating Mining Operations

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### **The National Green Tribunal**

The NGT was established in the year 2010 under the National Green Tribunal Act of 2010 to dispose off civil cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal rights related to the environment. The NGT replaced the existing National Environment Appellate Authority of the Ministry of Environment and Forest. The tribunal, according to the NGT Act of 2010, shall have the “jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in the Schedule 1”<sup>1</sup>. Acts specified in Schedule I are: <sup>2</sup>

- The Water (Prevention and Control of Pollution) Act of 1974,
- the Water (Prevention and Control of Pollution) Cess Act of 1977,
- The Forest (Conservation) Act of 1980,
- The Air (Prevention and Control of Pollution) Act of 1981,
- The Environment (Protection) Act of 1986,
- The Public Liability Insurance Act of 1991 and
- The Biological diversity Act of 2002.

At present, the NGT is functional at five locations. New Delhi, which is the principal seat of the Tribunal (Principal Bench), Bhopal (Central Zone), Pune (West Zone),

Kolkata (East Zone) and Chennai (South Zone), which are the other seats of the tribunal as zonal benches. By establishing zonal benches, persons from different parts of the country can have access to the tribunal.<sup>3</sup>Each tribunal will have Judicial and Expert Members. The NGT is a 'quasi-judicial body' and has limited power. It has authority similar to law-enforcement agencies, but it is not like a normal court. The courts have the power to adjudicate all types of disputes, but NGT has the power of enforcing laws on administrative agencies. NGT was created to ease the burden on the normal courts. NGT's actions may be appealed to a court of law.<sup>4</sup>

### **NGT and Mining**

#### **Rat-hole mining in Meghalaya**

*All Dimasa Students Union DimaHasao Dist. Committee v. State of Meghalaya &Ors.*<sup>5</sup>

(Original Application No.110(THC)/2012 And other connected matters)

On 17 April 2014, National Green Tribunal Principal Bench, New Delhi instructed Chief Secretary of the Government of Meghalaya to ensure that illegal rat-hole mining is stopped within the areas of Meghalaya. In its order, the NGT had questioned the manner in which the mining is conducted in the state and termed it unscientific and illegal.<sup>6</sup>

Meghalaya's mines, concentrated primarily in the Jaintia Hills, are commonly known as 'rat hole mines'.

Large cranes are used to dig pits ranging from 100 to 300 feet into the hill until they hit the layer of coal. Labourers then crawl into the holes to dig out the coal by

excavating the side edge of the hill slopes and then coal is extracted through a horizontal tunnel. Tunnels are made into the seam sideways to extract the coal. Coals seams are reached. The pits have makeshift bamboo stairs for the labourers to use. Cranes then pull up barrows filled with coal from the tunnels. In the more 'traditional' mines, labourers carry the coal out on their backs in conical bamboo baskets. The pits have makeshift bamboo stairs for the labourers to use. Cranes then pull up barrows filled with coal from the tunnels. In the more 'traditional' mines, labourers carry the coal out on their backs in conical bamboo baskets. The coal from the tunnel or pit is taken out and dumped on nearby un-mined areas, from where it is carried to the larger dumping places near the highways for trade or transportation. <sup>7</sup>

***KaHimaNongstoin Land Owners, Coal Traders and Producers Association v. All Dimasa Students Union, DimaHasao District Committee &Ors<sup>8</sup>***

The coal traders and mine owners filed an appeal in the Supreme Court in 2016 against the NGT's order. In an order dated 21 September 2016, the Supreme Court allowed the appellants who had mined the coal, **to transport the coal on payment of royalty and other fees. The extracted coal could be transported from 1 October 2016 till 31 May 2017.** It further directed that no other extraction should take place in the meantime. <sup>9</sup>

Subsequently, the State of Meghalaya filed an application in the Supreme Court wherein it is stated that approximately 5.00 lakhs MT of coal is still lying on various places and time up to 31st May 2018 be granted to transport the aforesaid coal.

**Supreme Court on 28 March 2018 extended the time for transportation of the extracted quantity of approximately 5.00 lakhs MT lying in various places in**

**the State of Meghalaya, upto 31.05.2018** in the same terms and conditions as contained in the order dated 21.09.2016. It further added: "It should also be ensured that while transporting the aforesaid quantity of coal, it shall not lead to creation of any type of pollution."<sup>10</sup>

On 13 December 2018, 15 coal miners were trapped in a mine in Jantia Hills in Meghalaya. The latest order was passed when the authorities were finding it difficult to rescue the 15 miners trapped since December 13 in an illegal coal mine as there was no blueprint of the 355-foot well which has a "maze of rat holes". Taking cognizance of this the NGT on 4 January 2019 passed an interim order whereby the state Government had to deposit the State Rs 100 crores with the SPCB.<sup>11</sup>

The Tribunal in its order stated:

"[t]hat in spite of statutory framework and binding legal precedents and orders, violation of law is rampant. Stern approach is, thus, required against the polluters as well as statutory authorities conniving or colluding with the polluters. The statutory authorities are trustees of the people and if their failure results in harm to the citizens or to the environment, the Court/Tribunal has to adopt strict approach to make them accountable so that such action acts as deterrent to prevent further harm."<sup>12</sup>

The Tribunal states further:

We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs. 100 Crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs. 100 crores within two months with the CPCB in this regard. We have already noted the extent of damage found and the value of the illegally mined material, apart from clandestine mining for which sufficient material is not available. The State had collected, as noted in the earlier order, royalty of Rs. 400 crores which by now must be a higher figure. The State is at liberty to recover the amount from those

~~involved in illegal or clandestine~~ mining and also from the officers who may colluded or who may have failed in their duties. The amount deposited with the CPCB will be spent for restoration.”<sup>13</sup>

### **Illegal Sand Mining**

#### ***Deepak Kumar V. State of Haryana (2012) 4 SCC 629***

The Government of Haryana issued a number of auction notices for mining of minor minerals, sand and gravel quarries of an area not exceeding 4.5 hectares as well as auction notices for areas exceeding 5 hectares for quarrying of minor minerals, road metals, stone mines etc., with certain restrictions on quarrying in the river beds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavat basin, Dohan basin, etc. As per the EIA 2006 notification, mining leases for minor minerals on less than 5 hectares of land do not require any prior EIA clearance. The Court held that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting ‘environmental clearance’ from the MoEF. The Court held that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting ‘environmental clearance’ from the MoEF.<sup>14</sup>

The Court observed that sand mining on both side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. While proposals for mining of major minerals typically undergo environment impact assessment and environmental clearance procedure, due attention had not been given to environmental aspects of mining of minor minerals.<sup>15</sup>

The Court also made note of the fact this lacuna had come to the notice of the MoEF, which found that less attention was given to environmental aspects of mining of minor minerals since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant.<sup>16</sup>

The Supreme Court was of the view that all State Governments / Union Territories have to give due weight to the recommendations of the MoEF in consultation with all the State Governments and Union Territories. The Court also held that the Model Rules of 2010 issued by the Ministry of Mines are vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.<sup>17</sup>

The Court was of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol, which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.<sup>18</sup>

***National Green Tribunal Bar Association v. Ministry of Environment & Forests & Ors.***

On 5 August 2013, The National Green Tribunal (NGT) issued a restraining order against all sand mining activity being carried out across the country without environmental clearance. The order was passed in the light of the recent controversy surrounding the suspension of IAS officer posted as sub divisional magistrate (SDM) in Greater Noida in GautamBuddh Nagar in Uttar Pradesh after she cracked down on the mining mafia.<sup>19</sup>

While passing the order, NGT reaffirmed the Supreme Court's order in 2012, which banned any kind of mining of minor minerals, including sand, without environmental clearance from the Union Ministry of Environment and Forests.<sup>20</sup>

In addition there have been several orders in the above-mentioned case as well as other cases on illegal sand mining by the NGT.

On 7 January 2016, The National Green Tribunal directed all state governments to ensure that there is no sand mining on the riverbeds being carried without prior environment clearance.<sup>21</sup>

"All the state governments shall ensure that there is no illegal, unauthorized and mechanized mining on riverbeds contrary to/without environmental clearance and the consent of the pollution control boards," the bench said. The green panel's direction came while hearing a plea by NGO Readiness for Empowerment through Legitimate Action (RELA) and PolavaramMandal ex-president VaraLaxmi seeking directions to Andhra Pradesh, Telangana, Odisha and Maharashtra governments to ban illegal sand mining.<sup>22</sup>

The NGT, in its 13 September 2018 order, directed the Ministry of Environment, Forest, and Climate Change (MoEF&CC) which had done away with requirements of public hearing and environmental impact assessments (EIA) for certain mines to revise its procedures for granting clearances. The order would have a significant bearing on the construction sector whose ability to source sand legally, and sustainably, has always been in question.<sup>23</sup>

Clearance for major minerals such as iron ore or bauxite is granted by the Centre. In the case of minor minerals, and for areas up to 50 hectares, it is the State Environment Impact Assessment Authority (SEIAA) that does the job. These clearances are to be as per the procedures provided for under the Environment Impact Assessment notification of 14 September 2006 (EIA 2006) – requiring a public hearing, an EIA and an environment management plan (EMP).<sup>24</sup>

Leases under five hectare areas were exempted from this requirement under EIA 2006. This prompted many, in Uttar Pradesh, Rajasthan and Haryana in particular to break up their quarries into smaller plots of 4.9 ha. When brought to its notice, the Supreme Court “noting the serious deleterious effect of quarrying, mining and removal of sand in-stream and up-stream of rivers to the environment” had ruled on 27 February 2012 that, irrespective of size, all such operations would require ECs. The landmark order of in the matter of *Deepak Kumar v. State Of Haryana & Ors*<sup>25</sup> would allow for clampdown on the rampant illegal sand mining taking place across the country.<sup>26</sup>

That year the Ministry made EIA, EMP and public hearing applicable to leases of less than five hectares. Meanwhile certain states set up district authorities with powers to clear the smaller mines. The NGT, pointing out that states had no such policy-making powers, had in 2015 asked the Centre to come up with a uniform policy. On 15 January 2016, the government issued a notification allowing such district authorities to clear leases of upto five hectares. It went further, exempting leases of 5- 25 ha from carrying out EIAs and public hearings. Clusters of mines, individually smaller than five hectares, were also exempted. A second notification provided guidelines for the constitution of such district authorities.<sup>27</sup>

It has directed the ministry to issue a fresh notification and furnish report of compliance with its order dated 13 September 2018, on or before 31 December.

On 4 April 2019, The Green Panel said it is the duty of the government to provide complete protection to the natural resources as a trustee of the public at large.<sup>28</sup>

"Moreover, even a policy to give free sand as welfare measure cannot justify unregulated mining unmindful of impact on environment. If in the course of mining, damage is caused, the same must be recovered from such violators. Authorities cannot avoid their duty under the environmental law to restore the damage which is a duty to future generations," the bench said.<sup>29</sup>



~~On 13 May 2019, the Supreme Court~~ suspended the Deposit of 100 Crore by the Andhra Pradesh Government on an appeal filed against the NGT order. The AP Government claimed that it had not been allowed an opportunity to be heard. The Supreme Court in the Interest of Natural Justice suspended the deposit of the fine and gave the AP Government a period of 2 weeks to move an appropriate application Before the NGT.

"Until the NGT takes a decision, the direction for the interim deposit of Rupees One hundred crores shall remain suspended. We clarify that we have only suspended the direction of the NGT to the above extent. We have not expressed any opinion on the merits of the appeal," the bench said.<sup>30</sup>

### **Sea erosion of Alappad Coastal Village due to sand mining**

After taking *Suo Moto* cognizance on 16 January 2019 on a press report on the issue of sea erosion of Alappad coastal village in Kerala due to mineral sand mining, the National Green Tribunal today directed the Collector of Kollam District to submit a report on the situation there. The Principal Bench of NGT at New Delhi took note of the news item titled "17 year-olds video gets Kerala talking of the impact of sand mining" published in Indian Express on January 16. The report discussed the video of a 17 year old girl of Alappad sharing apprehension of submergence of the coastal hamlet due to continued mining and dredging operations carried out by Indian Rare Earths Ltd (IREL) and Kerala Minerals and Metals Ltd (KMML), both public sector undertakings.<sup>31</sup>

Alappad is sandwiched between the sea and backwaters, and its soil is rich in black sand that contains important minerals like monazite, ilmenite, rutile and zircon, which are being extensively mined since 1960s by IREL, a central undertaking and KMML owned by Kerala government.<sup>32</sup>

Rampant mining has caused the shrinkage of extent of Alappadpanchayath from 89.5 sq. mts. to 75.6 sq. mts. The members of the bench discussed among themselves as to whether directions should be issued to the State Pollution Control Board or the District Collector to report on the situation. Finally, direction was issued to the District Collector by the bench.<sup>33</sup>

The NGT has made significant strides in curbing illegal mining and in most cases the Supreme Court while hearing appeals upholds the orders of the NGT but as stated earlier the NGT being a Tribunal has a number of limitations. These limitations at times cause impediments in the working of the Tribunal and perhaps keep it from being as effective as it should be. To be totally effective it must be given wider powers. The hope is that in future such changes will take place.

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<sup>1</sup> National Green Tribunal, An Information Booklet (January 2014), [http://www.greentribunal.gov.in/Writereaddata/Downloads/NGT\\_Information\\_Booklet.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/NGT_Information_Booklet.pdf).

<sup>2</sup> *Ibid.*

<sup>3</sup> ShridharRengarajan et al, *National Green Tribunal of India – An Observation from Environmental Judgments*, 25(12) ENVIRONMENTALSCIENCE ANDPOLLUTIONRESEARCH11313-11318 (2018), <https://link.springer.com/article/10.1007/s11356-018-1763-2>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Order of the National Green Tribunal Regarding Rat-Hole Mining In the Jantia Hills Meghalaya 17/04/2014*, India Environmental Portal: Knowledge for Change,<http://www.indiaenvironmentportal.org.in/files/rat%20hole%20mining%20Jaintia%20NGT%2017Apr2014.pdf>

<sup>6</sup> *Ibid.*

<sup>7</sup> EnvisCenter, Ministry Of Environment and Forests, Govt. Of India, *Curse of the BlackGold: How Meghalaya Depends on Coal* (2015),<http://ismenvis.nic.in/ViewGeneralLatestNews.aspx?format=Print&Id=8495>

<sup>8</sup> *Order of The Supreme Court Regarding Illegal Coal Mining in the State of Meghalaya 21/09/1026*, India Environmental Portal: Knowledge for Change,<http://www.indiaenvironmentportal.org.in/content/453554/order-of-the-supreme-court-of-india-regarding-illegal-coal-mining-in-meghalaya-21092016/>

<sup>9</sup> *Ibid.*

<sup>10</sup> Order Of The Supreme Court Of India Regarding Illegal Extraction Of Coal In The State Of Meghalaya, 28/03/2018, India Environmental Portal: Knowledge for Change, <http://www.indiaenvironmentportal.org.in/content/453554/order-of-the-supreme-court-of-india-regarding-illegal-coal-mining-in-meghalaya-21092016/>

<sup>11</sup> PTI, *NGT Imposes 100 crore fine on Meghalaya Government for Failing to Curb Illegal Mining*, THEECONOMICTIMES, Jan. 5, 2019, <https://energy.economictimes.indiatimes.com/news/coal/ngt-imposes-rs-100-crore-fine-on-meghalaya-govt-for-failing-to-curb-illegal-mining/67391392>.

<sup>12</sup> Threat To Life Arising out of Coal Mining in The South Garo Hills Dist. v. State of Meghalaya &Ors., [http://www.greentribunal.gov.in/Writereaddata/Downloads/13-2014\(PB-D\)OA4-1-19.pdf](http://www.greentribunal.gov.in/Writereaddata/Downloads/13-2014(PB-D)OA4-1-19.pdf)

<sup>13</sup> *Ibid.*

<sup>14</sup> InforMEA, *Law And Cases*, Deepak Kumar v. State of Haryana (2012) 4 SCC 629, <https://www.informea.org/en/court-decision/deepak-kumar-vs-state-haryana-and-others>

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> AnupamChakravartty, *No Sand mining Without Environmental Clearance: NGT*, Down To Earth, <https://www.downtoearth.org.in/news/no-sand-mining-without-environment-clearance-ngt-41855>.

<sup>20</sup> *Ibid.*

<sup>21</sup> PTI, *Stop Illegal Sand Mining on Riverbeds: National Green Tribunal To States*, Jan. 7, 2016, <https://www.ndtv.com/india-news/stop-illegal-sand-mining-on-riverbeds-national-green-tribunal-to-states-1263281>

<sup>22</sup> *Ibid.*

<sup>23</sup> MeeraMohanty, *NGT asks Environment Ministry to Revise Diluted Clearance Procedures for Minor Minerals*, THEECONOMICTIMES, Sep. 27, 2018, <https://m.economictimes.com/news/politics-and-nation/ngt-asks-environment-ministry-to-revise-diluted-clearance-procedures-for-minor-minerals/articleshow/65984763.cms>

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> PTI, *NGT imposes 100 crore penalty on Andhra Pradesh Govt over illegal sand Mining*, The Week, Apr. 7, 2019, <https://www.theweek.in/wire-updates/national/2019/04/07/lgd3-ngt-ap-fine.html>

<sup>29</sup> *Ibid.*

<sup>30</sup> PTI, *SC suspends 100-cr penalty on Andhra for failing to stop sand mining*, BUSINESS STANDARD, May 13, 2019, [https://www.business-standard.com/article/pti-stories/illegal-sand-mining-sc-suspends-ngt-order-asking-ap-to-deposit-rs-100-cr-with-cpcb-119051301127\\_1.html](https://www.business-standard.com/article/pti-stories/illegal-sand-mining-sc-suspends-ngt-order-asking-ap-to-deposit-rs-100-cr-with-cpcb-119051301127_1.html)

<sup>31</sup> Live Law News Network, *News Report On Sea Erosion Of Alappad Coastal Village Due To Mining Prompts NGT's Suo Moto Action*, Jan. 16, 2019, <https://www.livelaw.in/news-updates/news-report-on-sea-erosion-of-alappad-coastal-village-due-to-mining-prompts-ngts-suo-moto-action-142158>

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*