

In Re : T.N. Godavarman Thirumulpad vs Union Of India on 31 January, 2024

Author: Pamidighantam Sri Narasimha

Bench: Prashant Kumar Mishra, Pamidighantam Sri Narasimha, B.R. Gavai

2024 INSC 78

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 202/1995

IN RE: T.N. GODAVARMAN THIRUMULPAD

...PETITIONER

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT

JUDGMENT

P.C.

1. This judgment is in the context of institutionalisation and reconstitution of the Central Empowered Committee. 1 The CEC was originally directed to be constituted by an order of this Court dated 09.05.2002.² Almost for a period of two decades, the CEC was functioning as an ad hoc body. We noticed that the present composition of the CEC also consisted of persons who are more than 75 years of age and some of whom are also residing outside India. We also noticed that much water had flown when the CEC 1 Hereinafter 'CEC'.

Jayant Kumar Arora Date: 2024.01.31 2 In IA No. 295 in WP(C) No. 202/1995 reported as T.N. Godavarman Thirumulpad v. Union 16:54:13 IST Reason:

of India, (2013) 8 SCC 198. Pursuant to the said direction, a notification dated 17.09.2002 was issued by the Central Government constituting the CEC as a statutory authority under Section 3(3) of the Environment (Protection) Act, 1986.

was initially constituted, inasmuch as, various enactments concerning environmental issues were enacted, so also various regulatory bodies were constituted under the said enactments.

We further found it necessary to have a relook at the CEC's functioning. We, therefore, passed orders dated 24.03.2023 and 18.05.2023 in this regard.

2. The Ministry of Environment, Forest and Climate Change thereafter issued a Notification dated 05.09.2023 under Section 3(3) of the Environment (Protection) Act, 1986, constituting the CEC as a permanent body for “the purposes of monitoring and ensuring compliance of the orders of the Supreme Court covering the subject matter of Environment, Forest and Wildlife, and related issues arising out of the said orders and to suggest measures and recommendations generally to the State, as well as Central Government, for more effective implementation of the Act and other orders of the Court”.³ By our order dated 18.08.2023, we have approved the aforesaid Notification. While approving the Notification, we also declared that the CEC shall continue to function subject to such orders and directions that this Court may pass from time to time.

3 See the Preamble of the notification dated 05.09.2023.

3. In Part I of this judgment, we will first present the conception, constitution, functions, and finally the institutionalisation of the CEC. In Part II, to entrench environmental rule of law in our environmental governance, we have attempted to formulate some new principles for the effective monitoring of various bodies, institutions, and regulators established for protecting our forests, wildlife, environment, and ecology.

PART □I

4. Original Constitution and Functioning of CEC till 2023: This Court’s endeavours to protect forests in India and to ensure regulation of non□forest activities in forests commenced in 1996. Even prior to the constitution of the CEC, this Court directed the constitution of various bodies to oversee and monitor the compliance of its orders. In one of the most important orders dated 12.12.1996,⁴ this Court defined the term ‘forest’ as covering all statutorily recognised forests, irrespective of how they were designated (either as reserved, protected or otherwise). The term ‘forest land’ in Section 2 of the Forest (Conservation) Act, 1980 was held to include any area recorded as a forest in 4 T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267. government records, irrespective of its ownership. Along with mandating prior approval of the Central Government to undertake any non□forest activities in forests and issuing directions on the felling of trees, this Court also directed the constitution of Expert Committees by each state government to identify ‘forests’ and sustainable existence of saw mills in forests. This Court also directed each state government to constitute a committee with the Principal Chief Conservator of Forests and another Senior Official to oversee the compliance of its orders and the filing of status reports by the states.

5. In its order dated 04.03.1997, ⁵ this Court constituted a High□Powered Committee⁶ to oversee the implementation of its orders in the North□Eastern region and to also oversee preparation of inventory of timber, apart from permitting its sale. By order dated 17.04.2000, ⁷ this Court empowered the HPC to also supervise the transportation of illegal timber, oversee investigation into cases of illegal felling of trees, and to re□examine licensing of units.

6. The CEC was constituted by this Court by order dated 09.05.2002⁸ to monitor the implementation of its orders and to 5 T.N. Godavarman Thirumulpad v. Union of India, (1997) 3 SCC 312. 6 Hereinafter ‘HPC’.

7 T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 646. 8 T.N. Godavarman Thirumulpad v. Union of India, (2013) 8 SCC 198. present cases of non-compliance, including with respect to encroachment removals, implementation of working plans, compensatory afforestation, plantations and other conservation issues. The Court directed that the CEC must be constituted until such time that the Central Government constitutes a statutory body under Section 3 of the Environment (Protection) Act. The CEC, so constituted comprised: (i) a Chairman, nominated by the Ministry of Environment and Forests⁹ in consultation with the amicus curiae, (ii) a nominee of the MoEF,

(iii) two NGOs who are to be nominated in consultation with the amicus curiae, and (iv) a Member Secretary. These members (other than the nominee of the MoEF) could not be removed without the Court’s permission.

7. The above order required that the reports and affidavits filed by states pursuant to this Court’s orders were to be placed before the CEC for its examination and recommendations. The recommendations of the CEC would be placed before this Court for orders. Further, persons who are aggrieved by any steps taken by the government in purported compliance of this Court’s orders could seek relief from the CEC, which must decide the applications in conformity with the Court’s orders. To perform⁹ Hereinafter ‘MoEF’.

these functions, the CEC was given the power to call for documents from any person or government, summon any person and receive evidence on oath, and seek assistance/presence of any person or official, including the power to co-opt persons as special invitees for dealing with specific issues. When an issue pertains to a particular state, the Chief Secretary and Principal Chief Conservator of Forests of that state were to be co-opted as special invitees wherever feasible. The composition of the CEC was finalised by this Court by order dated 09.09.2002.¹⁰ In this order, the Court also took note of the draft proposed notification under Section 3(3) of the Environment (Protection) Act that constituted the CEC as a statutory body for five years. The Court directed that once the notification is issued, the functions and responsibilities of the CEC are to be exercised as a statutory committee. The Central Government issued the notification constituting the CEC under Section 3(3) on 17.09.2002.¹¹ 10 T.N. Godavarman Thirumulpad v. Union of India, (2009) 17 SCC 755. Under this order, the Court appointed the following members of the CEC:

a. PV Jayakrishnan, Secretary, Government of India as Chairman;

- b. Shri NK Joshi, ADG of Forests, Member;
- c. Valmik Thapar, Ranthambore Foundation as Member;
- d. Advocate Mahendra Vyas as Member;
- e. MK Jiwarajka, IGF as Member Secretary.

8. The first modification of the order dated 09.05.2002 came by way of order dated 14.12.2007. 12 The modified terms of reference, which superseded all previous orders, were as follows:

“1.2. The committee shall exercise the following powers and perform the following functions:

(i) to monitor the implementation of this Court's orders and place reports of non□ compliance before the Court and the Central Government for appropriate action;

(ii) to examine pending interlocutory applications in the said writ petitions (as may be referred to it by the Court) as well as the reports and affidavits filed by the States in response to the orders passed by the Hon'ble Court and place its recommendations before the Court for orders;

(iii) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to this Court in that behalf;

(iv) for the purposes of effective discharge of powers conferred upon the Committee under this order, the Committee can:

(a) call for any documents from any persons or the Government of the Union or the State or any other official;

(b) undertake site inspection of forest area involved;

(c) seek assistance or presence of any person(s) or official(s) required by it in relation to its work;

(d) co□opt one or more persons as its members or as special invitees for dealing with specific issues;

(e) co□opt, wherever feasible, the Chief Secretary or his representative and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular State;

(f) to suggest measures generally to the State, as well as Central Government, for the more effective implementation of the Act and other orders of this Court;

12 T.N. Godavarman Thirumulpad v. Union of India, (2013) 8 SCC 204.

(v) to examine and advise/recommend on any issue referred to the Committee.”

9. The composition of the CEC was modified by this Court by its order dated 21.02.2008¹³ and the term of office for the new members was directed to be for three years or until further orders, whichever is earlier. In another order dated 11.09.2009, one of the members of the CEC was replaced¹⁴ and by order dated 03.02.2017, the Member Secretary was replaced.¹⁵

10. Developments in 2023: It is in the context of IA No. 174896/2019 seeking permission of this Court to construct a Convention Centre at Patnitop that the present issue of reconstitution of CEC is taken up. The said application was allowed by this Court on 24.02.2023 subject to obtaining clearance from the concerned statutory authorities.¹⁶

11. The CEC submitted its report on the subject matter on 13.03.2023. When the report was placed before this Court on 24.03.2023, the Court made the following observations regarding ¹³ T.N. Godavarman Thirumulpad v. Union of India, (2008) 3 SCC 182. ¹⁴ T.N. Godavarman Thirumulpad v. Union of India, (2009) 16 SCC 401. ¹⁵ T.N. Godavarman Thirumulpad v. Union of India, (2022) 10 SCC 584. ¹⁶ IA No. 196062 and 174896 of 2019 in T.N. Godavarman Thirumulpad v. Union of India, W.P. (C) No. 202/1995, order dated 24.02.2023 the functioning of the CEC. The relevant portion of the order dated 24.03.2023 is extracted below: ¹⁷ “10. In any case, we are of the view that once an order is passed by this Court, it is not appropriate for a Committee which was constituted under the very orders of this Court to give a report which in effect, questions the correctness or otherwise, of the orders passed by this Court.

11. A Committee which is constituted under the orders of the Court cannot consider itself to be an appellate authority in regard to the orders passed by this Court.

12. We are further informed by the learned Solicitor General that at times, the members of the CEC are not ad idem on all the issues, which are ultimately reported to this Court.

13. We, therefore, direct that hereinafter, wherever there is a separate or dissenting opinion of any of the members of the CEC, such opinion shall also be placed before the Court alongwith the report.

14. It is further informed that some of the members of the Committee have crossed the age of 75 years and some of the members are also living abroad.

15. No doubt, the Committee has rendered yeomen services to the cause of environment. However, we are of the view that for effective functioning of the CEC, it is appropriate that some experts in the relevant fields who are relatively younger to the present incumbents, can contribute in a more energetic and efficient manner. It will therefore be appropriate that some of the old members, who have attained an advanced age or are not available in India all the time, are replaced by younger members.

16. We, therefore, request the learned Solicitor General and both the learned Amicus Curiae to give a list of persons, who have expertise in environmental and ¹⁷ IA No. 196062 and 174896 of 2019 along with CEC Report No. 11/2023 in T.N. Godavarman Thirumulpad v. Union of India, W.P. (C) No. 202/1995, order dated 24.03.2023. ecological fields. The same shall be done within three weeks

from today.

17. List these applications on 19.04.2023 for direction.”

12. When the matter was next listed on 18.05.2023, 18 learned Solicitor General submitted that the Central Government had accepted the suggestion of the Court to constitute the CEC as a permanent statutory body. Union of India was to publish a draft notification under Section 3 of the Environment (Protection) Act, 1986 to constitute the CEC within 15 days and place the notification before this Court. This notification would contain provisions on the qualification of members, their tenure, powers and responsibilities, etc. The relevant portion of the order dated 18.05.2023 is extracted below:

“On the last date when the matter was heard, a suggestion was made by the Bench that instead of the CEC (Central Empowered Committee) being an ad hoc body, it would be in the larger interest that the CEC as an institution should be a permanent statutory body. Mr. Tushar Mehta, learned Solicitor General, has accepted the said suggestion. He states that the Union of India would publish a draft notification under the provisions of Section 3 of the Environment (Protection) Act, 1986 providing for the constitution of the CEC. He submitted that the draft notification would contain provisions related to the qualification of the Members to be appointed, their tenure, their powers and responsibilities etc. 18 T.N. Godavarman Thirumulpad v. Union of India, I.A. Nos. 196062 and 174896 of 2019 in W.P. No. 202/1995, order dated 18.05.2023.

Learned Solicitor General submits that the draft notification will be published within a period of 15 days from today and that the same shall be placed before the Court on the next date.”

13. On 18.08.2023,¹⁹ a draft notification issued by the Ministry of Environment, Forest and Climate Change²⁰ for constitution of the CEC was placed before the Court, with a copy to the learned amicus curiae. We examined the draft notification in detail and made certain suggestions about incorporating certain features for the effective and efficient functioning of the CEC. Certain suggestions were also made by the learned amicus curiae. The learned Solicitor General did not have any objection to the same and submitted that the suggestions would be incorporated in the final notification. Pursuantly, the Central Government was permitted to proceed with the issuance of the notification to constitute the CEC as a permanent body in the interest of all stakeholders. This Court also permitted the MoEFCC to proceed with the constitution of members of the CEC in accordance with the notification. The relevant portion of the order passed by this Court is extracted below:

19 T.N. Godavarman Thirumulpad v. Union of India, I.A. Nos. 196062 and 174896 of 2019 in W.P. No. 202/1995, order dated 18.08.2023. 20 Hereinafter ‘MoEFCC’.

“2. In pursuance of the aforesaid order, Mr. Tushar Mehta, learned Solicitor General of India, has handed over a draft notification to be issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) regarding constitution of Central Empowered Committee (CEC). The said draft

has already been shared with Mr. K. Parameshwar, learned Amicus Curiae.

3. Learned Amicus Curiae submits that he has only one suggestion to the draft notification i.e. there should be a provision for periodical audit of the functioning of the CEC by the MoEFCC.

4. Learned Solicitor General does not have any objection to the said suggestion. He states that the suggestion given by the learned Amicus Curiae would be incorporated in the final notification that would be issued by the MoEFCC.

5. We, therefore, permit the Union of India to proceed further with the issuance of notification for constitution of the CEC as a permanent body.

6. We find that rather than CEC functioning as an ad hoc body, it functioning as a permanent body would be in the interest of all the stake holders.

7. We also permit the MoEFCC to proceed further with the constitution of the CEC in accordance with the notification that will be issued by the MoEFCC.”

14. Pursuant to the above referred orders dated 18.05.2023 and 18.08.2023, the MoEFCC issued a Notification dated 05.09.2023²¹ under Section 3(3) of the Environment (Protection) Act to constitute a permanent authority, i.e., the Central Empowered Committee (CEC), for monitoring and ensuring compliance of this Court’s orders covering the subject□matter of environment, forest, and wildlife and related issues arising out of these orders; and to suggest measures and make recommendations to the states and Central Government for more effective implementation of the Act and this Court’s orders.

15. Under the new notification, the CEC shall comprise: i) Chairman, ii) Member Secretary, and iii) Three expert members (one each from the fields of environment, forest, and wildlife). The Chairman and three expert members are to be nominated by the Central Government for a tenure of 3 years, which can be extended to one more tenure subject to the prescribed age limit of 66 years. The Member Secretary is appointed by the Central Government to be the Chief Coordinating Officer of the CEC and to assist the CEC in the discharge of its functions.

16. The notification also provides for the functions and powers of the CEC in accordance with the orders of this Court along with certain other functions. They are:

“2. The Committee shall exercise the following powers and perform the following functions:□A. Powers and functions conferred upon the Committee by the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202/1995 and 171/1996 in the case of T. N. Godavarman Thirumalpad Vs. Union of India and others:□

a) to monitor the implementation of Supreme Court's orders in above matters and place reports of noncompliance before the Central Government for appropriate actions;

b) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to the Central Government in that matter;

c) for the purposes of effective discharge of powers conferred upon the Committee under this order; the Committee can:—i. call for any documents from any persons or the government of the Union or the State or any other official.

ii. undertake site inspection.

iii. seek assistance or presence of any person(s) or official(s) required by it in relation to its work. iv. co-opt one or more persons as special invitees for dealing with specific issues.

v. co-opt, wherever feasible, the Secretary of the State Government dealing with the subjects related to Forest or Wildlife or Environment or his representative or the Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular State.

vi. to suggest or recommend measures generally to the State as well as Central Government, for the more effective implementation of the Act and other orders of the Supreme Court in above matters.

B. to examine and advise or recommend on any issue referred to the Committee by the Central Government, from time to time.”

17. The notification provides that the states or Central Government shall give reasons in writing for not accepting any suggestion or recommendation of the CEC and the decision of the Central Government shall be final. 22 Further, in case of deferment of the decision of any State Government with the CEC’s recommendation, the matter shall be referred to the Central Government and the decision of the Central Government shall be final and binding.23 We may clarify at this very stage that the 22 *ibid*, s.3.

23 *ibid*, s.4.

decisions of the Central Government, or, for that matter, State Governments, are always subject to the orders of this Court. When this notification was placed before us, we clarified this position, and we hereby reiterate that the order of the State and/or Central Government under clauses 3 and 4 will be subject to any direction or order that this Court may pass from time to time.

18. The members of the CEC are appointed in their personal capacity and are to function under the administrative control of the MoEFCC, with headquarters in Delhi. 24 The salaries and allowances payable, other perks and conditions of service of the Chairperson and members are to be prescribed and they cannot be varied to their disadvantage after the appointment. 25 MoEFCC is required to provide suitable and adequate office accommodation for the CEC and requisite manpower, budgetary support, and infrastructure for the discharge of functions and powers delegated to the CEC.26 MoEFCC is also required to meet the expenditure incurred, including salaries and remuneration to members and supporting staff.27 The CEC is required to submit 24 *ibid*, s.5.

25 *ibid*, s.6.

26 *ibid*. s.7.

27 *ibid*, s.8.

quarterly reports to the Central Government and MoEFCC for periodical review and audit of the CEC's functioning. 28

19. Finally, the Central Government appointed the members of the CEC by another notification dated 08.09.2023, and the composition is as follows:29 i) Sri Siddhant Das, Chairman, ii) Sri Chandra Prakash Goyal, Member, iii) Sri Sunil Limaye, Member,

iv) Dr. J.R. Bhatt, Member and v) Ms Banumathi G, Assistant Inspector General of Forests, MoEFCC, Member Secretary. Thereafter, the matter came up before us on 11.12.2023. On the said date, we heard the learned Solicitor General as well as the learned amicus curiae at length. We had also called for suggestions for more effective functioning of the CEC.

20. We find that by virtue of the Notification dated 05.09.2023, our concerns regarding the functioning of the CEC as an ad hoc body and that hereinafter it should be institutionalised as a permanent body have been taken care of. The said Notification provides for the constitution of the CEC, its powers, functions, mandate, members, method of appointment, terms of service, and monitoring of its functioning.

28 *ibid*, s.9.

21. We further direct the CEC to adopt the following measures to promote institutional transparency, efficiency, and accountability in its functioning:

i. The CEC shall formulate guidelines for the conduct of its functions and internal meetings. The CEC shall formulate the operating procedures delineating the roles of its members and the Secretary of the CEC.

ii. The CEC shall formulate guidelines about the public meetings that it holds, ensure the publication of meeting agenda in advance on its website, maintain minutes of meetings, and set out rules regarding notice to parties. iii. The CEC shall formulate guidelines for site visits and, if necessary, hearing the public and affected parties therein.

iv. The CEC shall formulate guidelines fixing time limits for site visits, preparation of reports, and also the manner of preparation of reports.

v. We further direct that these guidelines/regulations must be accessible for anyone to seek. They shall be posted on the official website of the CEC.

PART II

22. As new bodies, authorities, and regulators for environmental governance emerge from time to time, their institutionalisation assumes extraordinary importance. Institutionalisation means that these bodies must work in compliance with institutional norms of efficiency, integrity, and certainty. In this context, the role of the constitutional courts is even greater.

23. Environmental Rule of Law: Environmental rule of law refers to environmental governance that is undergirded by the fundamental tenets of rule of law.³⁰ The rule of law regime is one that has effective, accountable, and transparent institutions; responsive, inclusive, participatory, and representative decision-making; and public access to information.³¹ It recognises the vital role that institutions play in governance and focuses on defining the structural norms and processes that guide institutional decision-making.³² ³⁰ United Nations, ‘Environmental Rule of Law: First Global Report’ (2019) <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>, p.1, 8. The United Nations has defined environmental rule of law with reference to 7 core components, which are:

- i. Fair, clear, and implementable environmental laws; ii. Access to information, public participation, and access to justice through courts, tribunals, commissions, and other bodies; iii. Accountability and integrity of decision-makers and institutions; iv. Clear and coordinated mandates and roles, across and within institutions; v. Accessible, fair, impartial, timely and responsive dispute resolution mechanisms;
- vi. Recognition of the mutually reinforcing relationship between rights and environmental rule of law; and vii. Specific criteria for the interpretation of environmental law.

³¹ Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401, para 156. ³² Himachal Pradesh Bus Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309, para 48.

24. While several laws, rules, and regulations exist for protection of the environment, their objective is not achieved as there is a considerable gap as these laws remain unenforced or ineffectively implemented. Rule of law in environmental governance seeks to redress this issue as the implementation gap has a direct bearing on the protection of the environment, forests, wildlife, sustainable development, and public health, eventually affecting fundamental human rights to a clean environment that are intrinsically tied to right to life.³³ Accountability of the authorities impressed with the duty to enforce and implement environmental and other ecological laws is an important feature of judicial governance. In the context of accountability, this Court in Vijay Rajmohan v. CBI³⁴ has held:

“34. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring

accountability of the officer or authority in charge.

35. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between “duty bearers” in authority and “right holders” affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015 and is also recognised as one of the six principles of the Citizens Charter Movement.

36. Accountability has three essential constituent dimensions : (i) responsibility, (ii) answerability, and (iii) enforceability. Responsibility requires the identification 33 Hanuman Laxman Aroskar (supra), paras 143-144. 34 (2023) 1 SCC 329.

of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.”

25. In India, environmental rule of law must draw attention to the existing legal regime, rules, processes, and norms that environmental regulatory institutions follow to achieve the goal of effective and good governance and implementation of environmental laws. More importantly, the focus must be on the policy and regulatory and implementation agencies. In doing so, environmental rule of law fosters open, accountable, and transparent decision-making and participatory governance. The renewed role of constitutional courts will be to undertake judicial review to ensure that institutions and regulatory bodies comply with the principles of environmental rule of law.

26. Existing Institutional Governance of the Environment in India:

Environmental regulation in our country is performed by various bodies constituted under legislations concerning the environment, forests, and wildlife. Governance is also through the exercise of executive power by the Central and State Governments. These bodies perform their function of regulating private and public activities that impact the environment, forests, and wildlife in accordance with environmental legislations, rules, regulations, and notifications passed under them. An overview of some of the main bodies that regulate the environment in India can be encapsulated as follows:

i. Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB): These Boards were initially constituted under the Water (Prevention and Control of Pollution) Act, 1974.³⁵ They also function under the Air (Prevention and

Control of Pollution) Act, 1981.³⁶ The function of the CPCB under these Acts is to promote cleanliness of water streams and wells and to improve air quality and combat air pollution. In furtherance of these functions, the Board advises the Central Government, coordinates activities of states, provides technical assistance to SPCBs, lays down standards, and performs any other function as may be prescribed. The SPCBs ³⁵ Water (Prevention and Control of Pollution) Act, 1974, ss. 3 and 4. ³⁶ Air (Prevention and Control of Pollution) Act 1981, ss. 3 and 4.

perform similar functions by advising the State Governments on matters concerning air and water pollution.³⁷ ii. Authorities concerning protection of wildlife under the Wildlife Protection Act, 1972: The Central Government appoints a Director of Wild Life Preservation and the State Government appoints Chief Wild Life Wardens, Wild Life Wardens, and Honorary Wild Life Wardens.³⁸ The Central Government shall constitute the National Board for Wild Life to promote the conservation and development of wildlife and forests. ³⁹ The National Board can frame policies and advise the Central and State Governments on promoting wildlife conservation and effectively controlling poaching and illegal trade; recommend setting up and managing national parks and sanctuaries; conduct impact assessment of activities on wildlife; review progress of wildlife conservation; and prepare and publish status reports on wildlife in the country.⁴⁰ Similarly, State Board(s) for Wild Life must also be constituted under the Act for selecting and managing ³⁷ Water (Prevention and Control of Pollution) Act, 1974, ss. 16 and 17; Air (Prevention and Control of Pollution) Act 1981, ss. 16 and 17. ³⁸ Wildlife Protection Act, 1972, ss. 3 and 4. ³⁹ Wildlife Protection Act, 1972, ss. 5A and 5C. ⁴⁰ *ibid*.

protected areas; formulating policies for protection and conservation of wildlife; harmonising the needs of tribals and forest dwellers with wildlife conservation; and any other matter referred to it by the State Governments. ⁴¹ The Central Government must constitute the Central Zoo Authority that regulates the functioning of zoos by laying down minimum standards, recognition and derecognition, maintaining records, coordinating personnel training, and providing assistance. ⁴² The Central Government must also constitute the National Tiger Conservation Authority under the Act,⁴³ whose powers and functions have been set out in Section 38O. iii. The Central Government constitutes the Advisory Committee under the Forest (Conservation) Act, 1980 to advise the Central Government on the grant of approval for State Government's use of forest land for non-forest purposes and on any other matter connected with forest conservation which may be referred to it by the Central Government.⁴⁴ ⁴¹ Wildlife Protection Act, 1972, ss. 6 and 8. ⁴² Wildlife Protection Act, 1972, ss. 38A and 38C. ⁴³ Wildlife Protection Act, 1972, s. 38L.

⁴⁴ Forest (Conservation) Act 1980, s. 3.

iv. The Central Government, in exercise of its power under Section 3 of the Environment (Protection) Act, 1986 constitutes the State Environment Impact Assessment Authorities (SEIAA) at the state level to grant prior environmental clearance to certain projects, as specified in the Environment Impact Assessment Notification. v. National Biodiversity Authority and State Biodiversity Boards are constituted under the Biological Diversity Act, 2002.⁴⁵ The National Biodiversity Authority has the power to grant permission for obtaining biological resources and to

regulate matters pertaining to the grant of such permission, including intellectual property rights. The Authority also advises the Central Government on conservation and sustainable and equitable use of biodiversity, the State Governments on the management of heritage sites, and such other functions as may be prescribed by the Central Government. 46 The State Biodiversity Boards are tasked with advising State Governments on conservation and sustainable and equitable use of biodiversity, regulating the grant of 45 Biological Diversity Act, 2002, ss. 8 and 22. 46 Biological Diversity Act, 2002, s. 18.

approvals for commercial utilisation, bio-survey and bio-utilisation of biological resources in India, and such other functions as may be prescribed by the State Government.⁴⁷ vi. National Green Tribunal (NGT) has been constituted by the Central Government by notification under the NGT Act, 2010.⁴⁸ It has jurisdiction over all civil cases where a substantial question relating to the environment is involved and such question arises out of implementation of various legislations pertaining to the environment. 49 The NGT also has appellate jurisdiction over certain matters arising out of the Water (Prevention and Control of Pollution) Act, 1974; Forest (Conservation) Act, 1980; Air (Prevention and Control of Pollution) Act, 1981; Environment (Protection) Act, 1986; and Biological Diversity Act, 2002.⁵⁰ In *Municipal Corporation of Greater Mumbai v. Ankita Sinha*,⁵¹ this Court has held that the NGT is a sui generis body with all-encompassing 47 Biological Diversity Act, 2002, s. 23.

⁴⁸ NGT Act, 2010, s. 3.

⁴⁹ As per Schedule I of the NGT Act, the following legislations are covered: (i) The Water (Prevention and Control of Pollution) Act, 1974; (ii) The Water (Prevention and Control of Pollution) Cess Act, 1977; (iii) The Forest (Conservation) Act, 1980; (iv) The Air (Prevention and Control of Pollution) Act, 1981; (v) The Environment (Protection) Act, 1986; (vi) The Public Liability Insurance Act, 1991; (vii) The Biological Diversity Act, 2002. ⁵⁰ NGT Act 2010, s. 16.

⁵¹ 2021 SCC OnLine SC 897, para 61.

jurisdiction to protect the environment. It not only performs an adjudicatory role but also performs wider functions in the nature of prevention, remedy, and amelioration.⁵² vii. In *S. Jagannath v. Union of India*,⁵³ which was a writ petition regarding prawn farming in ecologically fragile coastal areas, this Court directed the Central Government to constitute an authority under the Environment (Protection) Act, 1986 and confer it with powers to protect ecologically fragile coastal areas, seashores, waterfronts, and other coastal areas. Pursuant to this judgment, the Central Government by notification under Section 3(3) constituted the National Coastal Zone Management Authority,⁵⁴ State Coastal Zone Management Authorities,⁵⁵ and Union Territory Coastal Zone Management Authorities⁵⁶ in coastal states and union territories. The NCZMA coordinates the actions of SCZMAs and UTCZMAs, examines proposals for classifying coastal zonal areas, reviews violations, and ⁵² *ibid*, para 46.

⁵³ (1997) 2 SCC 87, para 52.

54 Hereinafter 'NCZMA'.

55 Hereinafter 'SCZMA'.

56 Hereinafter 'UTCZMA'.

provides technical assistance to the State Governments and Central Government.

viii. In *M.C. Mehta v. Union of India*,⁵⁷ this Court took suo motu cognisance of falling ground water levels and directed the Central Government to constitute a Central Groundwater Board as an authority to regulate and control groundwater management and development under Section 3(3) of the Environment (Protection) Act, 1986. The main object of constituting the Board was the urgent need to regulate indiscriminate boring and withdrawal of underground water.⁵⁸ There are many more bodies, authorities, and officers under the Union and states that are involved in environmental governance. A comprehensive list of such bodies, including the above, is as follows:

- i. Animal Welfare Board of India⁵⁹
- ii. Atomic Energy Regulatory Board⁶⁰
- iii. Central Pollution Control Board⁶¹
- iv. State Pollution Control Boards⁶²

⁵⁷ (1997) 11 SCC 312, para 9.

⁵⁸ *ibid*, para 12.

⁵⁹ Constituted under the Prevention of Cruelty to Animals Act, 1960. ⁶⁰ Constituted under the Atomic Energy Act, 1962. ⁶¹ Constituted under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution Act, 1981. ⁶² *ibid*.

v. Director of Wild Life Preservation, Chief Wild Life Wardens, Wild Life Wardens, and Honorary Wild Life Wardens ⁶³ vi. National Board for Wild Life⁶⁴ vii. State Boards for Wild Life⁶⁵ viii. Central Zoo Authority⁶⁶ ix. National Tiger Conservation Authority⁶⁷ x. Coastal Zone Management Authority⁶⁸ xi. Central Groundwater Board⁶⁹ xii. Advisory Committee⁷⁰ xiii. National Biodiversity Authority⁷¹ xiv. State Biodiversity Boards⁷² xv. National Disaster Management Authority⁷³ xvi. State Disaster Management Authorities⁷⁴ xvii. District Disaster Management Authorities⁷⁵ xviii. National Green Tribunal⁷⁶ xix. State Level Advisory Bodies⁷⁷ xx. National Compensatory Afforestation Fund Management and Planning Authority⁷⁸ xxi. State Compensatory Afforestation Fund Management and Planning Authority⁷⁹ ⁶³ Appointed under the Wildlife Protection Act, 1972. ⁶⁴ Constituted under the Wildlife Protection Act, 1972. ⁶⁵ *ibid*.

⁶⁶ *ibid*.

⁶⁷ *ibid*.

⁶⁸ Constituted by the Central Government under Section 3(3) of the Environment Protection Act pursuant to Supreme Court Directions in *S. Jagannath v. Union of India*, (1997) 2 SCC

87. 69 Constituted by the Central Government under Section 3(3) of the Environment Protection Act pursuant to Supreme Court Directions in M.C. Mehta v. Union of India, (1997) 11 SCC

312. 70 Constituted under the Forest (Conservation) Act, 1980. 71 Constituted under the Biological Diversity Act, 2002. 72 *ibid*.

73 Constituted under The Disaster Management Act, 2005. 74 *ibid*.

75 *ibid*.

76 Constituted under the NGT Act, 2010.

77 Constituted under the Solid Waste Management Rules, 2016. 78 Constituted under the Compensatory Afforestation Fund Act, 2016. 79 *ibid*.

xxii. Environment Impact Assessment Authorities 80 xxiii. Expert Appraisal Committee⁸¹ xxiv. Dahanu Taluka Environment Protection Authority 82 xxv. Wildlife Crime Control Bureau xxvi. Forest Survey of India

27. The above referred bodies, authorities, regulators, and officers are constituted with persons having expertise in the field. They have the requisite knowledge to take appropriate decisions about contentious issues of the environment, forests, and wildlife, and also to ensure effective implementation of environmental laws. These bodies constitute the backbone of environmental governance in our country. They need to function with efficiency, integrity, and independence. As duty-bearers, they are also subject to accountability.

28. We may ask a simple question – how effectively are these environmental bodies functioning today? This question has a direct bearing on the protection and restoration of ecological balance.

29. As environmental governance through these bodies emerges, the obligation of the constitutional courts is even greater. Hitherto, the constitutional courts focused on decisions and actions taken by the executive or private persons impacting 80 Constituted under the Environment Impact Assessment Notification issued by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986. 81 *ibid*.

82 Constituted by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986.

the environment and ecology because the scrutiny by regulators was felt to be insufficient. Their judgment, review, and consideration did not inspire confidence and therefore, the Court took up the issue and would decide the case. In this process, a large number of decisions rendered by this Court on sensitive environmental, forest, and ecological matters constitute the critical mass of our environmental jurisprudence. This Court would continue to exercise judicial review, particularly in environmental matters, whenever necessary.

30. We however seek to emphasise and reiterate the importance of ensuring the effective functioning of these environmental bodies as this is imperative for the protection, restitution, and development of the ecology. The role of the constitutional courts is therefore to monitor the proper institutionalisation of environmental regulatory bodies and authorities.

31. In furtherance of the principles of environmental rule of law, the bodies, authorities, regulators, and executive offices entrusted with environmental duties must function with the following institutional features:

- i. The composition, qualifications, tenure, method of appointment and removal of the members of these authorities must be clearly laid down. Further, the appointments must be regularly made to ensure continuity and these bodies must be staffed with persons who have the requisite knowledge, technical expertise, and specialisation to ensure their efficient functioning.
- ii. The authorities and bodies must receive adequate funding and their finances must be certain and clear.
- iii. The mandate and role of each authority and body must be clearly demarcated so as to avoid overlap and duplication of work and the method for constructive coordination between institutions must be prescribed.
- iv. The authorities and bodies must notify and make available the rules, regulations, and other guidelines and make them accessible by providing them on the website, including in regional languages, to the extent possible. If the authority or body does not have the power to frame rules or regulations, it may issue comprehensive guidelines in a standardised form and notify them rather than office memoranda.
- v. These bodies must clearly lay down the applicable rules and regulations in detail and the procedure for application, consideration, and grant of permissions, consent, and approvals.
- vi. The authorities and bodies must notify norms for public hearing, the process of decision-making, prescription of right to appeal, and timelines.
- vii. These bodies must prescribe the method of accountability by clearly indicating the allocation of duties and responsibilities of their officers.
- viii. There must be regular and systematic audit of the functioning of these authorities.

32. The role of the constitutional courts is to ensure that such environmental bodies function vibrantly, and are assisted by robust infrastructure and human resources. The constitutional courts will monitor the functioning of these institutions so that the environment and ecology is not only

protected but also enriched.

33. Ordered accordingly.

.....J. [B.R. GAVAI]J. [PAMIDIGHANTAM SRI
NARASIMHA]J. [PRASHANT KUMAR MISHRA] NEW DELHI.

JANUARY 31, 2024.