Unregulated Soil Extraction for Linear Projects

Why in news?

Recently, the Supreme Court has set aside Environment ministry notification that exempted extraction of ordinary earth for linear projects such as road and railway extraction.

What was the 2020 exemption?

- In 2006, the Environment Ministry had issued notification under The Environment (Protection) Act, 1986, on activities that would require prior Environmental Clearance (EC).
- In 2016, another notification exempted certain categories of projects from EC.
- In 2020 the ministry added "Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines etc., to the list of exempted activities.
- The general purpose of the notification was to conform to the amendments made to the Mines and Minerals (Development to Regulation) Act, 1957 allowing lessees to continue mining for 2 years with statutory clearances and licences issued to their predecessors.
- The exemption was challenged in National Green Tribunal.

What are the grounds of challenge in NGT?

- **Violation of Article 14-** The exemption was deemed arbitrary and violative of Article 14 of Constitution of India, as it allowed indiscriminate extraction of earth without defining clear guidelines or safeguards.

  Article 14 guarantees equality before law and equal protection of the law to all persons

- **Arbitrary**- It was argued that the exemption favoured private miner and contractors, rather than serving public interest.
- **Bypassing legal procedures**- The petitioner contended that the Ministry wrongly exercised its powers under the pretext of public interest during the COVID- 19 lockdown to serve the interests of private entities.
- **Lack of environmental safeguards**- The exemption failed to incorporate necessary safeguards and standards for environmental protection, the absence of defined limits on the quantity of extraction or specification of areas for extraction posted risks to environmental conservation.
- **Absence of justification**- The Ministry provided no justification for waiving the requirement of public notice or for issuing a blanket exemption without considering environmental concerns or applying proper scrutiny.

- **Deepak Kumar vs State of Haryana (2012)-** The exemption violated the requirement of prior EC in the leases as laid by the top court in this case.
- **NGT ruling-** It held that the Ministry "should strike a balance and instead of being a blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum".
- **Review the exemption**- NGT asked the Ministry to review it *within three months*, due to the Ministry's delay in reviewing the exemption, the issue escalated to the Supreme Court.

Judicial scrutiny of exemptions under Environment Protection Act, 1986
• The NGT nullified a 2016 notification that exempted certain building and construction activities from needing EC, citing no evidence of environmental quality improvement1. • The NGT invalidated two Office Memorandums 2012 and 2013 that allowed for retrospective EC under the 2006 notification, emphasizing that the Environment Protection Act (EP Act) requires prior approval. • A Ministry notification aimed to extend an amnesty period (It is a fixed period of time during which people are not punished for committing a particular crime) in 2017 for projects categorized as violations, granting them ex-post facto approval, this was halted by the Supreme Court. • The Kerala High Court quashed a 2014 notification that exempted educational institutions and industrial sheds from the EC requirement if they had built-up areas over 20,000 square metre.

What is the stand of Supreme Court?

- **Lack of guidance**- The exemption was deemed arbitrary and against Article 14 of the constitution because it did not clearly define 'linear projects' or the amount and area of earth extraction allowed.
- **Absence of justification**- The Ministry did not provide a valid reason for removing the requirement of public notice, which is considered essential for such exemptions.
- **Inadequate details**- A subsequent notification was made by the ministry in 2023 which also failed to clarify the definition of linear projects, the responsible authority for environmental safeguards or set limits on the amount of earth that could be extracted.
- **Rushed exemption**- The Court highlighted the flaws in 2020 exemption, it expressed confusion over the government's rush to issue the exemption, since it coincided with a nationwide lockdown that halted construction.

Quick facts

National Green Tribunal

• **Year**- 2010.
• **Statutory body**- It is established under *National Green Tribunal Act, 2010.*
• **Ministry**- Ministry of Law and Justice
• **About**- It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues.
• Its dedicated jurisdiction in environmental matters shall provide speedy environmental justice.
• **Mandate**- To endeavour for disposal of applications or appeals finally *within 6 months* of filing of the same.
• Governing principles- The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by *principles of natural justice*.
• NGT applies the principles of *sustainable development*, *precautionary principle*, and *polluter pays principle*.
• **New Delhi**- It is the Principal Place of Sitting of the Tribunal.
• Bhopal, Pune, Kolkata and Chennai are the other four place of sitting.
• India is the *3rd country in the world*, after Australia and New Zealand, to set up a statutory body for environmental protection.

References

1. Indian Express- Why SC barred unregulated soil extraction?
2. NGT- About NGT

SHANKAR IAS PARLIAMENT
Information is Empowering