

Arts Pertaining to the Tenets of the Green Tribunal

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Abstract

In Recent Decades, number of Cases filed in respect to Environmental Protection before various High courts and Supreme Court is on the rise. Due to these cases and other matter cases the court has been overburdened. Government has taken up the establishment of Separate Judicial machinery for speedy disposal of cases, when in 1995 the Centre Court enacted National Green Bench Tribunal (NGT). This article consists of Composition of National Green Tribunal and its Composition besides significant important orders of NGT.

Keywords: Environment, National Green Tribunal, Judiciary, National Appellant Authority Act, Constitution.

Introduction:

The judicial system in India has been overburdened with a huge backlog of cases for a long time. The necessity for constituting special courts to deal with environmental concerns and cases was also brought to light by the apex court in the Oleum Gas Leak case. In the first case of its kind, Justice P.N. Bhagwati formed Expert Committees to assess the damage done to the environment as a result of the leaking of petroleum gas. The proposed courts would be equipped with the necessary knowledge and experience to make sound decisions about environmental protection. Parliament recognized the need for environmental-specific courts by passing the National Environmental Tribunal Act, 1995; however, This law was never implemented. After that, in 1997, we got the Federal Appellate Authority Act, which has its own limitations, such a restrictive mandate and missing pieces of the puzzle in the body's make-up.

AP Pollution Control Board versus State of A.P. and Indian Council for Environmental Legal Action versus Union of India both served as further catalysts for the development of environmental courts. The court determined that environmental courts would benefit from the use of ecological scientists and other professionals as advisors. India's judicial system might need some relief, therefore a non-government agency was established to hear environmental claims. The concept of environment courts was brought to the Supreme Court's notice by the Indian Centre for Environmental Legal Action's case (WWF India, 2014). Since criminal court procedures involving the Water and Air Act rarely reach a conclusion due to the work load or an absence of recognition of the significance of the environment, the Court concluded that the establishment of ecological courts would be helpful.

To better enforce environmental regulations, roughly 42 countries determined in 2009 to establish experts tribunals. India's choice to create a specialized environmental court was informed by

research into similar tribunals in New Zealand and by the provisions of the Court of Appeal in New South Wales, Australia. To fulfill its obligations as a signatory to the Sweden Declaration, 1972, India's parliament approved the National Green Tribunal Act, 1972 under Article 253 of the Constitution.

Structure of the NGT: The National Green Tribunal, also known as the NGT, has established its headquarters in New Delhi to implement the new law, with four additional regional tribunals in Pune (Western Area Bench), Bhopal (Central Area Bench), Madras (Southern Bench), and Calcutta (Eastern Bench). The jurisdiction of each Bench extends across many states. The mechanism for the circuit benches is also provided. For instance, hearings for cases heard by the Southern Zone bench situated in Chennai might take place in other locations like Bangalore or Hyderabad. The NGT is headed by a former Supreme Court judge who previously served in Delhi. Other members of the Judicial Branch are former Supreme Court Justices. There shall be at least one Judge and one Expert on each bench during the NGT. Members with expertise in environmental/forest conservation and similar fields should have at least 15 years of relevant work experience and a relevant academic degree.

Powers of the NGT : The NGT has jurisdiction over civil disputes involving environmental concerns or challenges connected to the application of the statutes included in Schedule I of the NGT Act.

“These include the following:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002. This means that any violations pertaining only to these laws, or any order / decision taken by the Government under these laws can be challenged before the NGT.”

Principles of Justice adopted by NGT: The NGT is not bound by the provisions of the Code of Civil Procedure of 1908, but is instead expected to use the principles of natural justice in all of its proceedings. Furthermore, the NGT does not follow the Indian Evidence Act of 1872.

It will be less difficult for environmental groups to provide evidence and arguments to the NGT than it would be in court, for example, to point out technical problems in a project or to propose alternatives that might lessen environmental harm but have not been examined. When issuing its Orders, judgments, and awards, the NGT will consider the rule of precaution, the polluter-pays idea, and the environmentally friendly development principle. It is important to highlight that the NGT may impose charges, including missed benefits owing to any temporary injunction, if it determines that a claim is incorrect.

The National Green Tribunal : The National Green Tribunal (NGT) was set up so that environmental problems may be resolved quickly and effectively. The National Green Tribunal is beneficial because it has a straightforward process for submitting cases seeking compensation for

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environmental damage or appealing a government decision. The Tribunal is not bound by the rules of process outlined in the Code of Civil process, but instead operates in accordance with the principles of natural justice. The Indian Evidence Act of 1972 therefore does not apply to proceedings before the Tribunal.

According to the law, the Tribunal has six months to make a decision on an application once it has been filed. The Precautionary Principle and the Polluter Pays Principle are two such internationally recognized concepts that the Tribunal must consider when making its rulings. It is the only organization of its kind to have the duty of enforcing the polluter-pays concept written into its parent legislation. The Act's Section 20 is one of its most distinctive features. The Tribunal is obligated to consider the concept of sustainable development in reaching its verdict.

The primary purpose of the National Green Tribunal is to be dedicated solely to the cause of environment conservation and apply all the powers vested in it to minimize the adverse impact to the environment and provide remedy and compensation for the same. As the policy enforcement has been weak in the country, the setting up of the National Green Tribunal was with a view to aid in strengthening the enforcement of environmental law in India. It is not only India which has taken a step towards providing special courts which deal exclusively with environment protection matters.

The NGT has been constituted as an independent statutory panel consisting of experts from a plethora of fields. The involvement of experts from a variety of field is to further the interests of the environment protection and development by looking beyond the cost-profit perspective of a project. The tribunal has been given powers to prohibit and declare illegitimate any action which is administrative in nature and is in contravention of environment legislative enactments.

The NGT has come a long since its constitution by displaying a proactive attitude towards the protection of the environment. The National Green Tribunal has jurisdiction to entertain all civil cases relating to environmental matters and question concerning the legislations provided in Schedule 1 of the National Green Tribunal Act.

The Act grants the Tribunal the authority to rule on cases when an important environmental issue is at stake. If the order of the tribunal is disregarded, there are severe consequences in place. This will guarantee that the Tribunal's ruling is carried out. The NGT might be seen as a quasi-judicial institution. This is not your typical judicial system. This means that the tribunal has the authority to enforce laws onto administrative entities, unlike courts which have the authority to judge only certain sorts of disputes.

Composition of The Tribunal : The five zones that make up the National Green tribunal are as follows: North, Central, East, South, and West. The North Zone, where the Principal Bench is located, has its administrative center in Delhi.

Important Orders of The Tribunal : The number of judgments delivered by the NGT every year has been on a rise ever since its inception. Up to 30th June 2021, the total case instituted before NGT was 35258 out of which 32936 has been disposed and 2322 case is still pending. This denotes the increasing environmental concerns in a developing nation such as India.¹⁰ NGT is also known for giving fast-track judgments. Orders against noise pollution in Delhi, biodiversity conservation in the Western Ghats, wildlife preservation in Assam, and similar matters have been issued to various agencies.

The order of deregistering of diesel vehicles which had surpassed a period of ten years was a win for the citizens of Delhi as it brought with it the possibility of reducing pollution to a large extent. The National Green Tribunal in the exercise of its powers has stayed the sanctions for various projects. In the POSCO case, the NGT requested the Ministry of Environment to reconsider and review the approvals after a few local villages denied consent to the project in accordance with the Forest Rights Act, 2006.

Large corporations and the government have been given a hard time for violating environmental regulations. In the matter of Adivasi MajdoorKisan Ekta Sangathan versus Ministry of Forests and Environment, the Tribunal found that the open hearing held during the process of giving environmental approval to Jindal Steel as well as Power's Mining Project was conducted in direct violation of the principles of fairness and equity and, as a result, stated invalid.¹³ The accountability of any agency in pursuance of any order passed by the NGT needs to be ensured. The order should be followed through to verify whether the Agency has complied with the instructions of the NGT or not.

Recent Judgments of the NGT: The National Green Tribunal (NGT) has issued numerous strong and dynamic rulings in recent years that have streamlined the processes for getting environmental approvals. The rising pollution levels in Delhi were noted by the Tribunal in the case of Vardhaman Kaushik v. Union of India. Among its many directives was the formation of a committee tasked with developing an action plan, the outlawing of the burning of plastics, and the placement of air filters and automated sensors in appropriate locations.

The National Green Tribunal may, and has in the past, taken "Suo moto" or "on its own" notice of environmental issues and begun proceedings. Case in point: the National Green Tribunal v. State of Himachal Pradesh and Others, in which the NGT found that increased vehicle traffic in the state was destroying its natural environment. In an effort to protect the planet, the court has mandated the implementation of a program of scientific forestation. The Green Tax Fund is intended to be used for the execution of restoration programs, and the Court ordered the government to collect fees from car owners to be deposited there.

Dolomite mining in Madhya Pradesh's tiger reserve forest has raised concerns from the Tribunal's own initiative. The State Government's Ministry of Environment and Forestry (MoEF) and other relevant agencies have been ordered by the Tribunal to take the necessary action. The Tribunal has successfully carried out its remit since its inception in 2010.

Until 2014, approximately 35 percent of cases brought before the Tribunal were related to environmental impact assessments. A high number of these cases were filed against the State claiming that due diligence had not been exercised while granting environmental clearances. The draft of any EIA report on a potential project had to be placed before the public and published in the local newspapers. The objections of the public, if any were to be recorded and sent to the expert appraisal committees. The system of the EIA was turning out to be insufficient. It was contended by the activists and local residents that the objections which were noted at the public hearings before granting the environmental clearance were not included in the final assessment report.

After the NGT was established, even the highest court in the land began to evaluate the volume of its own cases. With the goal of expediting and improving the disposition of environmental issues, the Supreme Court, in the case Bhopal Gas PeedithMahila Udyog Sangathan and Ors. V Union of

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India, sent all such matters to the Tribunal. The Court made it very clear that any new cases filed after the NGT Act went into force that were within its scope of major provisions would be transferred to the Tribunal and could only be filed with it. In 2015, the Supreme Court sent over three hundred cases to the Tribunal. The green bench has taken the lead in this effort to ensure that these issues be resolved as quickly as possible.

Cardinal Cases under NGT: The National Green Tribunal also elucidated upon the term “aggrieved person” in the case of *Samir Mehta v. Union of India* and stated that the term included an individual and even a juridical person in any form. The Tribunal observed that the Environment is not a subject which is focused on only one person but which had the society at the centre of it. This widened the scope of the word “aggrieved person” and brought within ambit of the definition, NGO’s as well as the other persons who were either directly or indirectly affected by a project. The NGT has been consistent in its decisions regarding cases where the party tried to speed up a developmental project or obtain clearances by brushing to the side environment protection procedures. That being so, the NGT has clarified its position of not being against economic development. That said, the Tribunal has noted that economic development should be subject to the regulations imposed for the growth and for the development to be under the legislative framework of sustainable development.

The application of the Polluter Pays Principle was observed by the Tribunal in the case of *Krishna Kant Singh v National Ganga River Basin*. There were excessive pollutants being discharged in the River Ganga which was not only degrading the River Ganga but was also harmful to the aquatic life such as Dolphins, Turtles and other aquatic life. In the case, the Simbhaoli sugar and distillery unit was seen to be a major polluter and as a result of this, was held liable to pay heavy compensation amounting to rupees five crore for restoration of various water bodies. The said decision was completely based on the polluter pays principle. The compensation was to be paid to the Uttar Pradesh Pollution Control Board which was to utilize it for cleaning of the Syana Escape Canal and prevention of ground water pollution among other measures.

NGT Heavy on Flouting of Environment Laws: The Tribunal has in a number of cases imposed a fine on persons carrying on development projects after observing that they were in clear contravention of the statutory requirement which thereby affected the environment. In some of these cases, the penalty imposed was estimated to be five percent of the total cost of the project. This was established in the case of *Shivani Constructions Vs Union of India*. In other cases, the Tribunal set up Committees to determine the amount which was to be paid by the developers. The decision by the Tribunal on matters concerning air pollution and pollution from water bodies has been encouraging to the extent that the Tribunal is seeking long term measures to internalize the total cost of pollution control by putting responsibility on the polluter

The matter of Coastal Regulation Zones was adjudicated by the Tribunal in the year 2016 extensively. The NGT passed approximately seventeen judgments in respect to Coastal Regulation Zones. The observations of the Tribunal included making public hearing mandatory before finalizing a CRZ plan. In a few cases, the Tribunal also withheld the clearances until some action was taken by the proper authorities relating to coastal zone management. It is also to be pointed out that in a few cases such as the case where a ban was imposed on Rat Hole Mining in East Jaintia Hills, people’s livelihood was affected as they were dependent on coal mining for their sustenance.

In such cases the Tribunal should have brought the ban to the notice of the people who were dependant on coal mining for their livelihood beforehand so as to offer them time to find other work.

Vast Functionality and reach of NGT : The National Green Tribunal is the apex environmental body in the country. The Tribunal has also declared a fine of ten thousand rupees on persons found throwing waste in public areas while observing that Municipal Solid Waste constituted one of the major pollutants of the country.

In response to water contamination caused by one of the major beverage firms in the country, the NGT issued strict directives in the case Hindustan Coca Cola Beverage Pvt Ltd v West Bengal Contamination Control Board. The NGT ruled that whomever caused the pollution must pay to have it mitigated, and that they must also compensate for the damage they caused to the environment. The Tribunal handed over the responsibility in this case to the West Bengal Pollution Control Board to assess the extent of damage to the environment and the amount which would be needed for its restoration. It is to be noted that it is in cases such as these, where the NGT has transferred to the government authority the role of awarding damages which are indicative of change. This constitutes a change, where the role of awarding costs previously reserved for the Court, has now been shifted to the government body.

The Tribunal reversed an earlier decision to clear a Municipal Solid Waste processing facility in Chennai for environmental impact due to inaccuracies in the associated environmental impact assessments (EIAs), as detailed in the case of N. Challamuthu v. District Collector. Scania Steel and Power Ltd. had its clearance halted by the NGT in Hussain Saleh Mahmud Uman Bhai Kara v. Gujarat State Level EIA Authority and others because the company had failed to conduct a public hearing as required by law.

In the Volkswagen case, the Tribunal levied a fine of Rs 500 cr. on the German Company for degrading the environment through the utilization of “cheat devices” in diesel vehicles in the country. The auto company was directed to pay the amount within two months. The bench also stated that the Monitory Body in cases of pollution may contemplate using the amount for betterment of the air quality in the National Capital Region and other immensely polluted areas. The excessive nitrogen oxide emissions by the company led to the Tribunal’s decision.

The Tribunal had established a team of representatives from the Ministry of Heavy Industries, Automotive Research Association and CPCB among others. There was admission on the part of the automobile company for the use of the „defeat device“ in around a million diesel engine cars sold in other global markets. The expert committee in its report had evaluated that the Volkswagen vehicles released around 48.678 tonnes of Nitrogen oxide in the year of 2016 in the national capital region. Earlier, the Tribunal had suggested a penalty of Rs.171.34 crore on the automobile manufacturer but the Tribunal increased the amount as a method for implementing deterrence. A cheat device is software which is inserted in diesel engines to defeat the emission tests by altering the performance of the car. As per the bench passing the order, Sustainable development was the guiding principle in passing the order.

NGT has passed orders for certain projects which prove that NGT is not unfavourable to economic development. In the case of Vedanta Ltd., the Tribunal set aside the respective government’s direction to shut down Sterlite Copper’s 250000-tonne plant. To ensure measures for environment

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protection are implemented, the Tribunal also issued instructions to the Vedanta's subsidiary to spend Rs 100 crore for welfare of persons residing in the area. The bench directed the Tamil Nadu Pollution Control Board to sanction the opening of the smelter within the stipulated time period. The order came with certain precautionary conditions which were to be followed by the plant such as setting up a website for submission and redressal of complaints of the stakeholders in the vicinity and updating the report on ground water quality on the website of the company.

POSCO, a Korean steel manufacturer, and the government of Odisha signed a memorandum of understanding in 2012 to establish a steel project. It was a radical move in favor of the local communities and forests when NGT suspended order. The National Green Tribunal (NGT) issued a ruling in 2012 about the historic case of Almitra H. Patel vs. Union of India, which banned any open burning of rubbish on land, including landfills.

In 2013, the NGT specifically relied on the notion of 'polluter pays' when it ordered the Alaknanda Hydro Power Co. Ltd. to compensate the petitioner in the Uttarakhand floods case.

In 2015, the NGT banned the use of diesel cars older than 10 years on the Delhi-National Capital Region highway. In 2017, the Art of Living Festival on the Yamuna Food Plain was fined Rs. 5 Crore for breaking environmental regulations.

In 2017, the NGT issued a temporary ban on plastic bags thinner than 50 microns in Delhi due to "the mortality of animals, the obstruction of drains, and the damage to the ecosystem."

Conclusion

There is currently need for more autonomy and wider NGT's scope for effective protection of environment in balance with human developmental activities. NGT has given various path-breaking judgments and directives to the authorities since its inception including a ban on noise pollution and illegal mining, orders for wildlife protection and the preservation of biodiversity at various places. Apart from that, NGT is diligently working towards ensuring proper implementation of its orders. It has also played a crucial role in addressing environmental issues in the post-industrial period.

The tribunal is facing a severe crunch of manpower and lack of resources. It is also not properly equipped to address the modern time issues related to environmental protection and conservation. These loopholes need to be addressed so that NGT becomes a path breaking institution offering dispute resolution in environment-related issues. Once these issues are successfully resolved, it will certainly benefit the Indian natural landscape to a great extent.

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