



## Role of National Green Tribunal in Protection Environment

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### ABSTRACT

National Green Tribunal Act, 2010 has been enacted to fulfill the long felt need of alternative forum to deliver speedy and inexpensive justice. The philosophy of public interest litigation is echoed in the legislation, a welcome direction for the class of victims who are unable to knock the doors of judiciary.

### KEYWORDS

#### Introduction:

National Green Tribunal was established in 2010 under Article 21 of the Indian Constitution which guarantees the citizen of India the right to healthy environment. India is the third country following Australia and New Zealand to have such system. The tribunal is a special fast-track quasi-judicial body comprising of judges and environment expert who will ensure expeditious disposal of cases.

In India the higher judiciary is loaded with excessive weight with a large backlog of cases. It may be appreciated that in order to have effective prevention of environmental pollution and environmental complaints should be decided in an efficient manner which is not possible in the present context of judicial administration. Therefore urgent need was felt for an alternative forum so that environmental cases were resolved without much delay. India's Environmental Court as a result of the need repeatedly express by the Constitutional Courts on the need to have a specialized judicial bodies to deal with complex environment questions. The trigger for setting up of Environmental Courts was through the Supreme Court of India which in its judgment highlighted the difficulties faced by Judges in adjudicating on Environment.<sup>1</sup>

The Supreme Court in **M. C. Mehta v. Union of India**<sup>2</sup> observed that "Environment Court"<sup>3</sup> must be established for expeditious disposal of environmental cases and reiterated it time and again. As a sequel to it the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997<sup>4</sup> were passed by the Indian Parliament. But both the Act proves non-starter. They could not cut much ice and there was a growing demand that some legislation must be passed to deal with environmental cases more efficiently and efficaciously. Ultimately the Indian Parliament Passed The National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues.<sup>5</sup>

The Supreme Court of India in its judgment referred the needs for establishment of environmental court which would have the benefit of expert advice from environmental scientist and technically qualified persons as a part of judicial process, after an elaborate discussion of the views of jurists in various countries.<sup>6</sup> The Supreme Court has also opined that as environment cases involve assessment of scientific data it would be desirable to have the setting up of "environmental courts on a regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication".<sup>7</sup>

In *Indian Council for Enviro-Legal Action v. Union of India*,<sup>8</sup> The Supreme Court observed that environmental Court having Civil and Criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.

In **Charanlal Sahu v. Union of India**<sup>9</sup> the court opined that "under the existing civil law damages are determined by the civil Courts, after a long drawn litigation, which destroys the very purpose of awarding damages so in order to meet the situation, to avoid delay and to ensure immediate relief to the victims, the law should provide for constitution of tribunal regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal."

Law commission was guided by the model of environmental court established in New Zealand and the Land and Environmental Court of New South Wales and also the observations of the Supreme Court in four judgments, namely, **M.C. Mehta v. Union of India**, *Indian Council for Environmental – Legal Action v. Union of India*, *A.P. Pollution Control Board v. Nayudu*.

The Commission also considered the reference made in the *Nayudu* case to the idea of a "multi-faceted" Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries. The report also adopted the practice of the Environmental Courts in Australia and New Zealand which function as appellate Courts against orders passed under the corresponding Water Acts, Air Acts and Noise Acts and various Environmental related Acts and also have original jurisdiction. They have all the powers of a Civil Court. Some have even powers of a Criminal Court.<sup>10</sup>

The Act is also an endeavor of the Parliament under Article 253 of the Constitution read with Entry 14 of List I of Schedule VII to fulfill the obligation of India towards Stockholm Declaration, 1972 in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment and Rio Declaration, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.

The act was also a response to implement the apex court's pronouncement that the right to healthy environment is a part of the right to life under Article 21 of the Indian Constitution.

#### Structure

Following the enactment of the said law, the Principal Bench of the National Green Tribunal has been established in the

National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (South Bench) and Kolkata (Eastern Bench). Each bench has a specified geographical jurisdiction covering several States in a region. There is also a mechanism for circuit benches. For example, the Southern Zone bench, which is based in Chennai, can decide to have sitting in other places like Bangalore or Hyderabad.

The chairperson of the National Green Tribunal is retired Judge of the Supreme Court, Head Quartered in Delhi. Other Judicial members are retired Judges of High Courts. Each bench of the National Green Tribunal will comprise of at least one Judicial Member and one Expert Member. Expert members should have a professional qualification and a minimum of 15 years' experience in the field of environment/forest conservation and related subjects.

#### **Procedure for filing an Application or Appeal**

The National Green Tribunal has a simple procedure to file an application seeking compensation for environmental damage. If the party is not satisfied with the decision can file an application before tribunal against an appeal, an order or any decision of the Government.

If no claim for compensation is involved in an application / appeal, a fee of Rs. 1000/- is to be paid. In case where compensation is being claimed, the fee will be one percent of the amount of compensation subject to a minimum of Rs. 1000/-.

#### **A claim for Compensation can be made for:**

1. Relief / compensation to the victims of pollution and other environmental damage including accidents including accidents involving hazardous substances;
2. Restitution of property damaged;
3. Restitution of the environment for such areas as determined by the National Green Tribunal.

No application for grant of any compensation or relief or restitution of property or environment shall be entertained unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.<sup>11</sup>

#### **Jurisdiction of the tribunal**

The National Green Tribunal has power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NATIONAL GREEN TRIBUNAL Act. These included the following.

1. The Water (Prevention and Control of Pollution) Act, 1947;
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3. The Forest ( Conservation ) Act, 1980;
4. The Air ( Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1991;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002;<sup>12</sup>

This Act confers on the Tribunal, 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 Schedule I to the Act. It further provides a time-limit of six months within which the applications for adjudication of dispute under this section shall be entertained by the Tribunal. It also empowers the Tribunal to allow such applications to be filled within a further period not exceeding sixty days, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period.

The term 'substantial question relating to environment' is defined under the act shall include an instance where:-

- (1) There is a direct violation of a specific statutory environmental obligation by a person by which:-

- a. The community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
- b. the gravity of damage to the environment or property is substantial; or
- c. the damage to public health is broadly measurable;

(2) The environmental consequences relate to specific activity or a point source of pollution.

#### **Powers of the Tribunal:**

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 NATIONAL GREEN TRIBUNAL.

#### **The National Green Tribunal has not been vested with powers to hear any matter relating to**

- Wildlife (Protection) Act, 1972,
- The Indian Forest Act, 1927
- Laws enacted by States relating to Forests, Tree Preservation etc.

Therefore, specific and substantial issues related to these laws cannot be raised before the National Green Tribunal. You will have to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file on Original Suit before an appropriate Civil Judge of the Taluka where the project that you intend to challenge is located.

#### **High court v. National green tribunal:**

Before National Green Tribunal, High Courts in different states used to take up important environmental cases, including suo-motu ones through 'Green Benches'. While some, in Tamil Nadu, West Bengal and Karnataka, remain active, others are slowly dying down, as environmental matters now go to National Green Tribunal. According to environmentalist Subhash Dutta<sup>13</sup>, the Green Bench is likely to become non-functional in the near future.

However, conflicts are brewing between National Green Tribunal and the high courts. As per the National Green Tribunal Act, appeals from National Green Tribunal can only go to the Supreme Court, thus by-passing the high courts. But the Madras High Court has disagreed with this provision. It has stressed that the bar imposed on lower courts by the Act, excluding them from deliberating on environmental cases, does not extend to the high courts. This is because the jurisdiction of a high court under Article 226/227 of the Indian Constitution is part of the Constitution's basic structure. In other words, the court stressed that environment appeals from National Green Tribunal had to go to the high court first before going to the apex court.

#### **'National Green Tribunal must have suo-motu powers'**

Justice Swatanter Kumar has been chairing the National Green Tribunal (National Green Tribunal) for nearly two years now. In an interview to Down To Earth, he speaks about some basic issues confronting the tribunal.

Dehli recorded the seventh-highest number of environment related crimes in the country in 2014. Although it had only 41 cases, as against the worst performers Rajasthan (2,666) and Uttar Pradesh (1,442).

The number of cases received since the establishment of National Green Tribunal till January 31 this year is 7,768, Lok Sabha was informed today. In the written response to a question in the Lok Sabha, Minister of State for Environment, Forest and Climate Change Mr. Prakash Javadekar said the number of cases disposed till January 31 is 5,167 and the number of cases pending is 2,601.<sup>14</sup>

#### **Conclusion:**

National Green Tribunal makes one more innovation by providing strict penalty for non-observation of the order of the

tribunal. This will allow implementation of the order of the tribunal.

Coming to dark side of the Act, the rules relating to constitution and composition of selection committee tilts the balance of power in favor of Central Government. Keeping in view the repeat of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 by the present Act, it is submitted that legislation should become operational in letter and spirit to provide much needed relief against offences/complaints for degradation of environment.

The present legislation provides interference and control by the central Government in the affairs and processes of the tribunal which should be avoided to give tribunal an unrestricted hand to decide the inherent matter as proceedings.

## REFERENCES

See Article on "India New Environmental Courts: The National Green Tribunal", By Ritwick Datta, Environmental Lawyer and coordinator of the Legal initiative for Forest and Environment (LIFE), New Dehli, Available at: [http://202.142.179.243:8080/jspui/bitstream/123456789/1334/1/6%20India%E2%80%99s%20National%20Green%20Tribunal%20\(Ritwick%20Dutta\).pdf](http://202.142.179.243:8080/jspui/bitstream/123456789/1334/1/6%20India%E2%80%99s%20National%20Green%20Tribunal%20(Ritwick%20Dutta).pdf) on dt. 26/08/2015 at 3.55pm (1996) 3 SCC 212; AIR 1996 SC 1446 The Bhopal gas disaster in 1984, also led the Supreme Court to emphasize on the need for constitution of environmental courts. The National Environment Appellate Authority had a very limited mandate and serves as an appellate body against the decision of the Ministry of Environment and Forest granting clearance to a project. "Environmental law", Prof. Satish C. Shastri, Fourth Edition, Eastern Book Company, Lucknow, Pg 170 A. P. Pollution Control Board v. M. V. Nayudu, 1999 (2) SCC 718 In M. C. Mehta v. Union of India, AIR 1987 SC 965-967: In Indian Council for Enviro-Legal Action v. Union of India. 1996(3) SCC 212: A. P. Pollution Control Board v. M. V. Nayudu, 2001 (2) SCC 62 1996 (3) SCC 212 1990 AIR 1480, 1989 SCR Supl. (2) 597 See Article on "National Green Tribunal: A Step Towards Environment Justice" Lexis Warrier Journal, ISSN: 2319-8338, Impact Factor: 3.737 See article on Everything you need to know about the National Green Tribunal (NGT), available at: <http://conservationindia.org/resources/ngt/> on dated 25/11/2015 at 6.30pm "Environmental Law", Dr. S. C. Tripathi & Mrs. Vibha Arora, Fifth edition, 2013, Central Law publication, Allahbad Mr. Datta has been designated as the top Hero of India in 2007 by the "Times of India". His activities have been covered in "India Today", Special Issue on "Spirit of India 50-- Pioneers of Change". He has been awarded Honour by "Hindustan Times" as one of the 25 "Change Makers" of the country in April 2012. He has taken part in the Thames River Cleaning Operations organized by Thames 21 in London. He had been invited by the European Green Party Leaders in October 2009. The Economic Times, PTI Mar 3, 2015 [http://articles.economictimes.indiatimes.com/2015-03-03/news/59725502\\_1\\_national-green-tribunal-wildlife-crime-control-bureau-lok-sabha](http://articles.economictimes.indiatimes.com/2015-03-03/news/59725502_1_national-green-tribunal-wildlife-crime-control-bureau-lok-sabha)