

A Analytical Study on the Contribution of National Green Tribunal in implementation of Environmental Provisions

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ABSTRACT: In Recent Decades, number of Cases filed has filed in respect to Environmental Protection before various High court and Supreme Court. Due to these cases and other matter cases the court has been overburdened. So, Government thanked about the establishment of Separate Court machinery to speedy disposal cases, so in 1995 Centre Court enacted National Green Bench Tribunal. This article consists of Composition of National Green Tribunal and its Composition and 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 need arose for the establishment of a separate environmental court to reduce the burden of case load on the existing judiciary.¹ 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.² For the first time, Justice P.N Bhagwati in the Oleum Gas Leak Case appointed expert committees for analyzing the extent to which the environment had been degraded. These courts which were suggested would have the technical know-how and expertise to decide matters of environment protection in a proper manner. Even though Parliament enacted the National Environmental Tribunal Act, 1995 to address the need for special courts to deal with environmental matters, the act was never implemented. The subsequent enactment of the National Appellate Authority Act, 1997 had its own limitations such as the restricted mandate and important vacancies in the composition which were not duly filled. The idea to constitute environmental courts was supplemented by two subsequent cases, namely the Indian Council for Enviro-Legal Action v Union of India and AP Pollution Control Board case. The court opined that the environmental courts would gain an advantage from the advice of environmental scientists and person with technical know-how as they would be part of the process. To reduce the burden of the case load in the Indian Judiciary, the need arose for a separate body which could deal with matters related to the environment. In the Indian Council for Enviro-Legal Action case, the Supreme Court brought to the forefront, the suggestion of

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¹ Raghav Dhanda's The Role of the National Green Tribunal in furthering the object of Environment Protection IJLMH | Volume 2, Issue 2 | 2019, ISSN: 2581-5369

² Rishu Mala, Role of NGT in Environment Protection, available at <https://www.slideshare.net/RishuMala/role-of-ngt-in-environment-protection>

setting up of environment courts.³ The Court opined that in view of proceedings in criminal courts with respect to the Water and Air Act never reaching their conclusion, either due to the workload or due to non-appreciation of the significance of environment matters, the setting up of environmental courts would be useful.

In the year 2009, it was approximated that almost 42 countries had decided to constitute specialist tribunals to better enforce their environmental laws.⁴ The decision to establish a specialized environmental court in India was taken while considering environmental courts in New Zealand as well as by taking from provisions of the Court in New South Wales, Australia. The Indian Parliament to fulfill its obligations towards the Stockholm Declaration, 1972 of which it was a part, enacted the National Green Tribunal Act, in accordance with Article 253 of the Constitution.

THE NATIONAL GREEN TRIBUNAL

The establishment of NGT was with the objective of providing expeditious and efficient disposal of cases relating to environment conservation. One of the advantages of the National Green Tribunal is that there is a very simple procedure for instituting a case for compensation for harm done to the environment or for filing an appeal against a decision of the government.⁵ The Tribunal also does not have to function in accordance with the procedure laid down under the Code of Civil Procedure but is guided by the principles of natural justice. Neither are the rules of evidence as laid down in the Indian Evidence Act, 1972 applicable to the Tribunal.

As per legislation, the Tribunal is required to dispose of an application within a period of six months from the date of filing of the same. The Tribunal while adjudicating disputes is to follow globally recognized principles which include the Precautionary Principle and the Polluter Pays Principle. It is the first agency of its type where the parent statute imposes upon it the obligation to apply the polluter pays principle. Section 20 is amongst the most unique characteristics of the Act. It mandates the Tribunal for the application of the principle of sustainable development while passing any decision.⁶

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.⁷ 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

³ 1996 AIR 1446

⁴ Gitanjali Nain Gill, A Green Tribunal for India, available at <https://www.jstor.org/stable/44248749?seq=1>

⁵ Praveen Bhargav, Everything you need to know about the National Green Tribunal (NGT), available at www.conservationindia.org/resources/ngt

⁶ Section 21 of the NGT Act

⁷ Sunil Kumar Agarwal, Establishment of National Green Tribunal in India : End of Road for Public Interest Litigation, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1878446

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 gives the Tribunal the power to adjudicate disputes where a substantial question related to environment is raised.⁸ There are strict safeguards which have been put in place for non-compliance or the order of the tribunal. This will ensure the implementation of the order passed by the Tribunal. The NGT can be termed to be a Quasi-Judicial body. It is unlike a normal court. This implies that unlike courts having the power to adjudicate all types of disputes, the tribunal has the power of enforcing legislation upon administrative agencies.

COMPOSITION OF THE TRIBUNAL

National Green tribunal is situated in five Zones-North, Central, East, South and West. The Principal Bench is situated in the North Zone, headquartered in Delhi. The Tribunal is headed by the Chairperson who sits in the Principal bench and has at least ten but not more than twenty judicial members and at least ten but not more than twenty expert members.

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.⁹ This denotes the increasing environmental concerns in a developing nation such as India.¹⁰ NGT is also known for giving fast-track judgments. It has passed orders to several authorities, which include orders against noise pollution in Delhi, conservation of biodiversity in the Western Ghats, protection of wildlife in Assam and the like.

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, 2006.¹¹

It has come down heavily upon big corporations as well as the government for not being in consonance with the relevant environmental laws.¹² In the case of *Adivasi Majdoor Kisan Ekta Sangathan v. Ministry of*

⁸ Ibid 6.

⁹ Greentribunal.gov.in last visted 30/7/2021.

¹⁰ Sridhar Rengarajan, Divya Palaniyappan, National Green Tribunal of India-an observation from environmental judgments, available at <https://link.springer.com/article/10.1007/s11356-018-1763-2>

¹¹ V. Venkatesan, The National Green Tribunal's decision to suspend the environmental clearance given to POSCO vindicated the project's critics, available at <https://frontline.thehindu.com/static/html/fl2908/stories/20130504290803500.htm>

¹² Armin Rosencraz&GeetanjoySahu, Assessing the National Green Tribunal after Four Years, available at <https://docs.mahupatra.in/newslines/articles/Upload/0f0228AB-83C3-4B64-9F8E-2E3FABEB20A6.pdf>

Environment and Forests, The Tribunal pointed out that the public hearing held in the case of granting environment clearance to the Jindal Steel and Power's Mining Project was in clear violation of the principles of natural justice and was hence declared 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.

In recent years, there have been some forceful and dynamic judgments passed by the NGT which have improved the procedures relating to obtaining environmental clearances. In the case of *Vardhaman Kaushik v. Union of India*, the Tribunal took notice of the increasing pollution levels in Delhi. It issued instructions to a committee for the preparation of an action plan and directed for prohibition of burning of plastics, and for the installation of air purifiers and automatic sensors at proper places among other directions issued by it.¹⁴

The National Green Tribunal is empowered to take and has even taken in the past, Suo moto cognizance of environmental matters and initiated proceedings. An example of this is the case of *NGT Vs State of HP and Ors.*¹⁵, where the NGT observed that the ever-increasing vehicular traffic in the state of Himachal Pradesh was leading to depletion of the natural habitat. The tribunal issued instructions for the starting of a plan for scientific forestation to conserve the environment.¹⁸ Moreover, the Court directed government to collect fees from the vehicle owners which was to be put in the Green Tax Fund for implementation of restoration plans. The Tribunal also on its own motion showed concern with regard to the dolomite mining in the tiger reserve forest in Madhya Pradesh. The Tribunal directed the MoEF and the respective departments of the State Government to take the required steps.¹⁶ Since the Inception of the Tribunal in 2010, it has triumphantly upheld its mandate.¹⁷

Another case was taken up Suo Moto by the NGT after taking cognizance of an article mentioning the felling of trees for the construction of a cricket stadium. An interim order was passed by the Tribunal whereby the Tribunal directed to the Forest Department officials that there would be no more felling of trees by any person in that vicinity.

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

¹³ M.A. No. 36 of 2011

¹⁴ Kaleeswaram Raj, *Decentralising Environmental Justice, Debating the National Green tribunal*, available at <https://www.epw.in/journal/2014/48/web-exclusives/decentralizing-environmental-justice.html>

¹⁵ CWP No. 2067 of 2019

¹⁶ Ibid 13

¹⁷ Ibid 13

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.¹⁸

After the National Green Tribunal was set up, even the Supreme Court started to assess its own case load. In a surprising move, the Supreme Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. V Union of India* transferred all the cases relating to the environment to the Tribunal with the objective of speedy and effective disposal of these cases.¹⁹ The Court in very clear terms stated that all the cases initiated after coming into effect of the NGT Act and which were covered under the significant provisions of the Act, would be shifted to the Tribunal and could only be initiated before the Tribunal. More than three hundred cases were transferred to the Tribunal by the Supreme Court in the year of 2015. It was the green bench which took this initiative to endure swift disposal of these cases. 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.²⁰ 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, 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.²¹

The application of the Polluter Pays Principle was observed by the Tribunal in the case of *Krishna Kant Singh v National Ganga River Basin*.²² 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 utilise it for cleaning of the Syana Escape Canal and prevention of ground water pollution among other measures.²³

¹⁸ Rita Brara, *Courting Resilience*, The National Green Tribunal, India, available at [www.unrisd.org/80256BC00BCCF9/httpNetITFramePDF?ReadForm&parentunid=9C68A7069F995E31C125825700529671&parentdoctype=paper&netitpath=80256B3C005Bccf9/\(httpAuzPages\)/9C68A7069F995E31C125835700539671/\\$file/Brara.pdf](http://www.unrisd.org/80256BC00BCCF9/httpNetITFramePDF?ReadForm&parentunid=9C68A7069F995E31C125825700529671&parentdoctype=paper&netitpath=80256B3C005Bccf9/(httpAuzPages)/9C68A7069F995E31C125835700539671/$file/Brara.pdf)

¹⁹ (2012) 8 SCC 326

²⁰ M.A No. 129 of 2012

²¹ Supra 1.

²² Original Application No. 299 of 2013

²³ Ibid 21

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*.²⁴ 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.²⁵

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.²⁶ 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.²⁷

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.²⁸

In the case of *Hindustan Coca Cola Beverage Pvt Ltd v West Bengal Pollution Control Board*,²⁹ the NGT imposed stringent orders in response to the water pollution caused by the one of the largest beverage corporations in the country. The NGT specifically stated that the Polluting entity must cover the costs of the reduction of pollution and that it was their obligation to compensate for the pollution in order to restore 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.³⁰

²⁴ Original Application No.310 of 2016

²⁵ Chandra Bhushan, Shreshta Banerjee, and IkshakuBezbaroa, Green Tribunal, Green Approach: The Need for Better Implementation of the Polluter Pays Principle, available at www.indiaenvironmentportal.org.in/file/file/green-triunal-approach-report.pdf

²⁶ Supra note 11.

²⁷ Lana I Ka Pasa, A Study on the Impact of livelihood due to National Green Tribunal Ban on Rat Hole Mining in East Jaintia Hills, available at 14.139.209.82.8080/smlui/bitstream/handle/123456789/31/lan%20final%20research.pdf?sequence=1&isAllowed=y

²⁸ Ruchi Singh, National Green Tribunal: A Road to Environmental Justice, available at www.raijmr.com/irjhs/wp-content/uploads/2017/11/IJRHS_2016_vol04_issue_05_02.pdf

²⁹ Dated 19th March, 2012

³⁰ Appeal No. 10 of 2011

In the case of *N. Challamuthu v. District Collector*,³¹ the Tribunal revoked the environment clearance granted to the Municipal Solid Waste processing plant in Chennai for providing wrong information in the EIA reports. In another case, in *Hussain Saleh Mahmad Uman Bhai Kara v. Gujarat State Level EIA Authority and others*, the NGT suspended clearance sanctioned to Scania Steel and Power Ltd for not adhering to the procedural requirements such as the holding of the public hearing.³²

In the Volkswagen case³³, 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.³⁴ 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.³⁵

NGT has passed an 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 protection are implemented, the Tribunal also issued instructions to the Vedanta’s subsidiary to spend Rs 100 core 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.³⁶

³¹ Application No. 20 of 2011

³² Rohini Attri, *Green Benches in India: The Anatomy of the National Green Tribunal Act , 2010*, available at [ijar.org.in/stuff/issues/v3-i4\(2\)-a017.pdf](http://ijar.org.in/stuff/issues/v3-i4(2)-a017.pdf)

³³ The NGT, in its order, upheld ‘polluter pays’ principle by saying the liability for causing harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environment.

³⁴ mission fiasco: NGT slaps Rs 500 crore fine on Volkswagen, available at <https://www.thehindubusinessline.com/companies/emission-fiasco-ngt-slaps-rs-500-crore-fine-on-volkswagen/article26454604.ece>

³⁵ *ibid*

³⁶ Arpan Chaturvedi, NickeyMirchandani, *National Green Orders Reopening of Vedanta’s Sterlite Copper Plant In Tuticorin*, available at <https://www.bloomberquint.com/law-and-policy/national-green-tribunal-orders-reopening-of-vedantas-copper-plant-in-tuticorin>

In *Ms. Betty C. Alvares Vs The State of Goa and Ors*³⁷, a complaint regarding various instance of illegal construction in the Coastal Regulation Zone of Candolim, Goa was made by a personal of foreign nationality, here tribunal held that even Foreign national can approach the National Green Tribunal if it is relating to environmental dispute.

*Almitra H. Patel & Ors. Vs. Union of India and Ors*³⁸, in this case the tribunal directed the respondents to complete prohibition on open burning of waste on lands, including at landfills. In *Srinagar Bandh Aapda Sangharsh Samiti & Another v. Alaknanda Hydro Power Co. Ltd. & Ors.*³⁹, in this case of applicant is that the respondent had dumped a huge quantity of ‘muck’ generated during construction of the Srinagar Hydro Electric Project without taking the safety measure to secure such much from the floods, due to heavy rains, reservoir of the project filled, due to opening of the gates of the dam, all the muck got carried to the villages resulting in huge loss to the life and property of the members of the samiti. Here the tribunal directs the respondent to pay claimed compensation along with 1 lakh each to the applicant along with cost.

In *Samit Mehta Vs Union of India*,⁴⁰ in this case tribunal adopted “polluter pays” and awarded compensation of Rs. 5 crores to applicant, here applicant made an application in relation to the damage caused to the sinking of a ship name M.V. Rak which was carrying huge amount of coal, fuel oil and diesel. Save Mon Region Federation and Ors. Vs Union of India and Ors,⁴¹ in this case appeal filed by an organization name save Mon Region federation along with a social activist against the grant of Environmental Clearance given to a INR 6,400 crore hydro project. This project effect the Black-necked Crane, which is a Schedule I species under the Wildlife Protection Act, 1972 and features in the ‘Threatened Birds of India’ apart from the birds, the area was also home to several other endangered species such as the snow leopard, red panda, Arunachal Macaque etc., the tribunal suspended the Environmental Clearance granted to project and directed EAC to make a fresh appraisal of the proposal for environment clearance grant and asked the Ministry of Environment and Forest to make a separate Study on the protection of the said bird.

In 2012, POSCO a steelmaker company signed a MoU with the Odisha government to set up steel project. NGT suspended order and this was considered a radical step in favour of the local communities and forests.

In 2012 Almitra H. Patel vs. Union of India case, NGT gave judgment of complete prohibition on open burning of waste on lands, including landfills – regarded as the single biggest landmark case dealing with the issue of solid waste management in India.

In 2013 in Uttarakhand floods case, the Alaknanda Hydro Power Co. Ltd. was ordered to compensate to the petitioner – here, the NGT directly relied on the principle of ‘polluter pays’.

In 2015, the NGT ordered that all diesel vehicles over 10 years old will not be permitted to ply in Delhi-NCR.

³⁷ M.A. No. 32/2014(WZ)

³⁸ Manu/GT/0150/2016.

³⁹ Original Application No. 03/2014: MANU/GT/0101/2016.

⁴⁰ MANU/GT/0150/2016.

⁴¹ MANU/GT/0150/2016

In 2017, the Art of Living Festival on Yamuna Food Plain was declared violating the environmental norms, the NGT panel imposed a penalty of Rs. 5 Crore.

The NGT, in 2017, imposed an interim ban on plastic bags of less than 50-micron thickness in Delhi because “they were causing animal deaths, clogging sewers and harming the environment”.

Conclusion

In Recent days the judiciary is overburdened with litigation so on that time national green tribunal gives the speedy remedy to victims of environmental disorders. There is need for more autonomy and widen 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 establishment of the tribunal was undoubtedly a noble step in addressing environmental disputes in Indian society. But every step comes with its own loopholes and challenges. 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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