

NATIONAL GREEN TRIBUNAL UNDER NATIONAL GREEN TRIBUNAL ACT, 2010

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INTRODUCTION: *The National Green Tribunal has been established on October 18, 2010 under the National Green Tribunal Act 2010¹ for effective and expeditious disposal of cases relating to environmental protection and conservation afforests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the required experience to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, shall be guided by principles of natural justice.*

The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and facilitate scale back the burden of proceedings within the higher courts. The tribunal is mandated to form and endeavor for disposal of applications or appeals finally finally within six months of filing of the same, it absolutely was a results of long procedure and also the demand for such tribunal started long back within the year 1984 when the Bhopal gas tragedy. Then the Supreme Court specifically mentioned the necessity for such tribunals within the case when the gas leaked from Shriram food and fertilizers limited in Delhi.

Though the credit for enacting the NOT Act, 2010 goes to the then setting Minister Jairam Ramesh, it became functional only because of repeated directions of the Supreme Court while hearing the Special Leave Petition titled **Union of India v. Vimal Bhai² THE NATIONAL GREEN TRIBUNAL BILL, 2009** The Bill was introduced within the Lok Sabha on July 31, 2009 by the Ministry of Environment and Forests. The Bill was mentioned the commission on Science & Technology, Environment & Forests (Chairman Dr. T. Subbarami Reddy) on September 15, 2009. So as to produce fast clearance for cases related to environmental damage, this Bill sets up the National Green Tribunal. The Tribunal will hear cases associated with major environmental damage as well as appeals under various environmental Acts.

Brief of the Bill

- The National Green Tribunal Bill, 2009 aims to set up specialized environmental courts within the country.

- The Bill replaces the present National Environmental proceeding Authority and has wider jurisdiction than the NEAA. It will hear initial complaints further as appeals from decisions of authorities under various environmental laws.
- The Tribunal shall consist of both judicial and expert members. Judicial members must have been judges of the Supreme Court or High Courts. Expert members have to possess technical qualifications and expertise, and also practical experience.
- The Tribunal shall hear only 'substantial question about the environment'. Substantial queries are those which (a) have an effect on the community at large, and not just individuals or groups of individuals, or (b) cause significant damage to the environment and property, or (c) cause harm to public health which is broadly measurable.

THE NATIONAL GREEN TRIBUNAL ACT, 2010

National Green Tribunal Act, 2010(NGT) is an Act of the Parliament of India that permits creation of a special tribunal to handle the timesaving disposal of the cases referring to environmental issues. It was enacted under India's constitutional provision Of Article 21, which assures the citizens of India the right to a healthy environment.

DEFINITION

The enact Act of Parliament defines the National Green Tribunal Act, 2010 as follows, "An Act to produce for the establishment of a National Green Tribunal for the effective and timesaving disposal of cases regarding environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto".

COMPOSITION OF NATIONAL GREEN TRIBUNAL³

The sanctioned strength of the tribunal is currently 10 expert members and 10 judicial members although the act allows for up to 20 of each. The Chairman of the tribunal who is the administrative head of the tribunal also serves as a judicial member. Every bench of tribunal must consist of at least one expert member and one judicial member. The Chairman of the tribunal is required to be a serving or retired Chief Justice of a High Court or a judge of the Supreme Court of India. Members are chosen by a selection committee (headed by a sitting judge of the Supreme Court of India) that reviews their applications and conducts interviews. The Judicial members are chosen from applicants who are serving or retired judges of High Courts. Expert members are chosen from applicants who are either serving or retired bureaucrats not below the rank of an Additional Secretary to the Government of India (not below the rank of Principal Secretary if serving under a state government) with a minimum administrative experience of five years in dealing with environmental matters. Or, the expert members must have a doctorate in a related field.

QUALIFICATIONS FOR APPOINTMENT OF CHAIRPERSON. JUDICIAL MEMBER AND EXPERT MEMBER

The qualification required by the person to become a chairperson is that he should have been a Supreme Court judge or chief justice of a High Court and to become eligible for becoming a judicial member of the

tribunal the person should have been a judge of the High court. To be qualified as an expert member of the tribunal a person shall possess a degree of master of sciences whether physical sciences or life sciences with a doctorate degree or masters of technology or masters of engineering having fifteen years of experience in that field with a five year experience in fields of environment and forests.

JURISDICTION

The Tribunal has Original Jurisdiction on matters of "substantial question relating to environment" (i.e. a community at large is affected, damage to public health at broader level) & "damage to environment due to specific activity" (such as pollution). However there is no specific method is defined in Law for determining "substantial" damage to environment, property or public health. There is restricted access to an individual only if damage to environment is substantial. The powers of tribunal related to an award are equivalent to Civil court and tribunal may transmit any order/award to civil court have local jurisdiction. However, the tribunal does not follow civil law. it follows principles of natural justice The Bill specifies that an application for dispute related to environment can be filled within six months only when first time dispute arose (provide tribunal can accept application after 60 days if it is satisfied that appellant was prevented by sufficient cause from filling the application).

Also Tribunal is competent to hear cases for several acts such as Forest (Conservation) Act, Biological Diversity Act, Environment (Protection) Act, Water & Air (Prevention & control of Pollution) Acts etc. and also have appellate jurisdiction related to above acts after establishment of Tribunal within a period of 30 days of award or order received by aggrieved party. The Bill says that decision taken by majority of members shall be binding and every order of Tribunal shall be final. Any person aggrieved by an award, decision, or order of the Tribunal may appeal to the Supreme Court within 90 days of commencement of award but Supreme Court can entertain appeal even after 90 days if appellant satisfied SC by giving sufficient reasons.

POWERS

The NGT has the 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 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 and it shall have the same powers as that of a Civil Court. Importantly, the NGT has not been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to

forests, tree preservation etc. Therefore, specific and substantial issues related to these laws cannot be raised before the NGT. One will have to approach the State High Court or the Supreme Court through a W^rit Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the Taluk where the project that you intend to challenge is located.

LIMITATION

Anything which is not covered under these seven acts the NGT is not competent to admit the suit for that matter. The major drawback of this limitation is that a person cannot approach the NGT for every environmental issue. For instance NGT cannot admit a suit for cutting of trees in a forest even though it is related to environment. This is because the protection of forest act is not within the jurisdiction of NGT. So in a way it is ambiguous for a common person to comprehend when to and when not to go to NGT to seek remedy. This is a reform which NGT needs that there should be inclusion of all acts related to environment degradation.

PROCEDURE FOR FILING AN APPLICATION OR APPEAL

The NGT follows a very easy procedure to file associate application seeking compensation for environmental damage or an appeal against an order or decision of the Government. The official language of the NGT is English.

For every application / appeal where no claim for compensation is concerned, a fee of Rs. 1000/- is to be paid just in case wherever 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 may be created for:

- Relief/compensation to the victims of pollution and different environmental harm including accidents involving hazardous substances;
- Restitution of property damaged;
- Restitution of the environment for such areas as determined by the NGT.

No application for grant of any compensation or relief or restitution of property or setting 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.

PRINCIPLES OF JUSTICE ADOPTED BY NGT

The NGT is not bound by the procedure arranged down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Further, NGT is also not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872. Thus, it will be comparatively easier (as against approaching a court) for conservation groups to present facts and problems before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.

While passing Orders/decisions/awards, the NGT will apply the principles of sustainable development, the precautionary principle and the polluter pays principles. However, it must be noted that if the NGT holds that a claim is false, it can impose costs including lost benefits due to any interim injunction.

REVIEW AND APPEAL

Under Rule 22 of the NGT Rules, there is a provision for seeking a Review of a decision or Order of the NGT. If this fails, an NGT Order can be challenged before the Supreme Court within ninety days.

REMARKABLE JUDGMENTS

Coal Blocks in Chhattisgarh forests

The National Green Tribunal has cancelled the clearance given by the then Union Environment and Forests Minister, Jairam Ramesh, to the Parsa East and Kante-Basan captive coal blocks in the Hasdeo-Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee.

The forest clearance was given by Mr. Ramesh in June 2011, overriding the advice of the Ministry's expert panel on the two blocks for mining by a joint venture between Adani and Rajasthan Rajya Vidyut Utpadan Nigam Ltd. The blocks requiring 1,989 hectares of forestland fell in an area that the government had initially barred as it was considered a patch of valuable forest and demarcated as a 'no-go' area. The order is bound to have a more far-reaching impact, with the tribunal holding that "mere expression of fanciful reasons relating to environmental concerns without any basis, scientific study or past experience would not render the advice of FAC a body of expert's inconsequential. Under the Forest Conservation Act, 1980, the FAC is required to appraise projects that require forestlands and advise the Environment Ministry to grant approval or reject the proposals.

But in this case, the NGT noted, the Minister had taken all of one day and relied upon his "understanding and belief without any "basis either in any authoritative study or experience in the relevant fields." The Minister, while clearing the coal blocks, had given six reasons for doing so, including that the coal blocks are linked to super-critical thermal power plant, which is imperative to sustain the momentum generated in the XI Plan for increasing power production. These 'anthropocentric' considerations, the NGT held, were not valid to evaluate the project.

Yamuna Conservation Zone⁶

The NOT said that the health of Yamuna will be affected by the proposed recreational facilities on the river. The NOT also recommended the Government to declare a 52km stretch of the Yamuna in Delhi and Uttar Pradesh as a conservation zone. **Ban on Decade Old Diesel Vehicles at Delhi NCR⁷**

An attempt to minimize air pollution at capital of India and NCR. PM 2.5 particles have reached alarming level. As per this order, 10 yrs old vehicles are not allowed to ply. However, as per Media report, central Government exploring to appeal against the order at Supreme Court, especially for personal vehicles.

CONCLUSION: Ever Since the enlargement of Industries and the beginning of 'developmental' activities within the country a large number of environmental problems have also come back up. There are a number of instances where such human activities have caused immense damage to the environment India is a nation in the world UN agency provides vast quantity of importance to environmental conservation. There are a number of legislations that deal with the environment and forest conservation and protection. The Green Tribunal adds another feather to India's cap. There are alternative such bodies just like the NEAA and

NETA that have did not serve the aim they were habitual constituted for but it will be unfair to compare them to the Green Tribunal. Failures in the past must not deter us from moving forward to new beginnings. Although the Act is still facing a lot of criticism, yet its basic framework appears reassuring and it is hard to say that it is not the step in the right direction. It would bring about the much needed reform in the way the courts deal with environmental issues and also the way people perceive environmental damage. With the introduction of a system that supports and encourages environmental justice, the green tribunal shall build India a role model for its neighboring nations of South-East Asia.

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