



THE ROLE OF GREEN TRIBUNAL IN LITIGATIONS: A CASE STUDY OF YETTINAHOLE PROJECT.

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Abstract:

To get good drinking water is one of the basic rights of the every citizen of India. Providing clean drinking water is an obligation of the government has towards the citizens. The only option is to divert surface water to the arid regions. Most of rivers have their origin in the Western Ghats and flow towards the west and then join the Arabian Sea. Currently the ambitious project of the government is the Yettinahole diversion which is under implementation. There are several environmental movements and protests which are against these development projects from Uttara Kannada district. The government also has a well-organized set of environmental laws and a good institutional setup for environmental governance. It is against this backdrop that this study focuses on the role of Green Tribunal with special reference to the litigations against Yettinahole project.

Keywords: Development, environment, environment movements, sustainable development, canals, policy making, environmentalist, water resources, dams .Tribunal Litigations.

Introduction:

There are several areas in Karnataka with different water management systems to suit the local ecological conditions. It was during the princely rule, there was diversity in water management and it is continued. The two examples are VanivilasSagar and Krishna Raja Sagar dams. After independence implementation of the five-year plans the dominant models of development were adopted .These models overlooked the local eco-friendly models All such mega water developments have faced opposition from the locals. In spite of the opposition from stake holders and environmentalists the dominant model is still being continued. Water development in Karnataka moved from diversity to uniformity which has led to several environmental issues. Here the researcher would like to focus on Yettinahole project as an example of the dominant development

model. There are development and environmental concerns of the project which is raising the role of Green Tribunals in balancing both.

Need and importance of the study

The particular area of conflict needs to be studied and it requires an in depth investigation to know the role of the Green Tribunals in resolving the cases on Environmental issues arising due to developmental activities . There are several cases filed against such projects in the Green Tribunal. Therefore, there is a need to study the role of Green Tribunal with special reference to Yettinahole Project.

The Green Tribunals have greater responsibilities towards environmental protection. Government of India has formed National Green Tribunal (NGT) during the year 2010. NGT is a ‘quasi-judicial’ body exclusively deals with the environment related civil litigations. NGT has settle many environmental issues and has got overwhelm response from different corners, it can be viewed as a positive step towards the environmental justice in India. Construction of large dams and diverting the surface water to arid regions is resulting in major environmental damages the country. There are several litigations filed in the Green Tribunal against such projects Hence it is important to study the role of NGT related to litigations on most controversial project Yettinahole.

Method

This is a qualitative study conducted by using the secondary data.

Review of Literature

The review of literature reveals different approaches by the various researchers in dealing with research problem related to the subject of the present study. It has the helped researcher in planning the specific study design. It reinforces and supports theoretical base for the study **Patra, Swapan Kumar 2013/1 The role of the "green tribunals" in**

India, <https://www.researchgate.net/publication/266676374> The role of the green tribunals in India

This study emphasises on the achievements of green tribunal. The author admits that there are limitations but the study lacks the discussions on the limitations of NGT. The study deals with role of NGT with regarding several environmental issues except the role concerned to litigations on the Environmental problems arising due to mega water diversion projects. Hence the author would like to throw light on the role of NGT in dealing with cases on river diversion projects.

Role of national green tribunal in protection of Environment with special reference to fundamental rights in India, Shailesh Kumar Ram, 2015, Department of Law Patna University. <https://shodhganga.inflibnet.ac.in/handle/10603/97864>

This study focuses on the Constitutional provisions dealing with Fundamental Rights and Environmental protection. Article 21 is discussed to show how Fundamental Rights and Environmental protection is

complementary to each other. Role of several institutional organisation and statutory provisions to protect Environment is analysed. Qualitative method is followed to study the role of NGT in protection of Fundamental Rights. The study lacks focus on the Environmental issues caused by mega water projects. the author would like to concentrate on the Yettinahole water diversion project.

The Role of the National Green Tribunal in furthering the object of Environment Protection, RaghavDhanda ©2019 IJLMH | Volume 2, Issue 2 | ISSN: 2581-5369. Page-1-11

This paper deals with plethora of fields that NGT covers. Several important orders and judgements delivered by NGT are discussed. This study is a detail enquiry into the merits and drawbacks of the Acts. Important limitations are critically analyzed. It lacks concentration on the legal framework required to deal with Environmental issues arising due to controversial water diversion projects coming up in recent days.

National Green Tribunal and Environmental Justice in India Swapan Kumar Patra & V.V.Krishna Indian Journal of Geo-Marine Science Vol.44(4), April 2015, pp.445-453

Government of India has formed National Green Tribunal (NGT) during the year 2010. NGT is a 'quasi-judicial' body exclusively deals with the environment related civil litigations. Before NGT has evolved, there were two previous efforts to establish green courts in India. These were National Environment Tribunal Act, of 1995 (NETA) and National Environment Appellate Authority Act, of 1997 (NEAA). However, the most effective environment court in the form of NGT has come into reality in 2010. After its establishment, NGT has settled many environmental issues and has got overwhelming response from different corners. This study conducted an empirical analysis of NGT judgments since its inception in October 2010 to December 2013. It analyzes the impact of NGT, the locations of conflicts. Special emphasis is given to the Coastal Zone management related conflicts settled in NGT. Although there are many limitations in NGT act and its procedures, it can be viewed as a positive step towards the environmental justice in India.

48. TV 9 – News Bulletin – 2015: What is Yettinahole ?

There are many research studies done on trans-boundary water disputes, inter basin river water transfer projects and river linking projects at the national and international levels. But the researcher has found no substantial work done on the most controversial water diversion project in Karnataka like the well-known Yettinahole.

There has been wide range of oppositions by the people who live where the project is being undertaken and also from the regions where it is going to be benefitted by this project. People of Dakshina Kannada (Western Ghats) oppose this because of the fear of ecological disaster. People of Doddaballapur and Kolar have opposed this project for not implementing Dr. Paramashivaiah study report and the uncertainty of not getting adequate drinking water.

This project aims at supplying drinking water to the drought-prone districts of Karnataka. Kolar and Chikkaballapur districts are frequently affected because of the erratic rainfall. This region lacks a permanent source of water for drinking purpose. There is a long-standing demand from the people of this region is for a permanent solution to the drinking water problem.

Considering the demand from the people from arid regions the government of Karnataka has initiated several studies for eradicating the drinking water problem faced by the people from these regions. One of such studies that were found more apt to be taken for further action is the diversion of Yettinahole, Kadumanehole, Kerihole and Hongadahalla. The streams join Gundya, and further from Gundya to Kumaradhara, and from Kumaradhara to Nethravathi river. These rivers are the primary source of water to the Nethravathi.

Nature of the Study

The present study is a qualitative in nature with theoretical background, which helps in the main to the present analysis.

Research Questions

- **Does the Green Tribunal play significant role in environmental Protection?**
- **What is the role of NGT in dealing with the litigations against mega water diversion projects?**
- **Does NGT Act have a specific legal framework to deal with litigations against water diversion projects?**

Objectives:

- **To analyze the role of NGT in Environmental Protection.**
- **To examine role of NGT regarding litigation on yettinahole project.**
- **To check whether the provisions of NGT are Environmental friendly in real sense.**
- **To examine importance of EIA**

Details of the Project:

The ongoing project is being implemented in two phases. The first phase of the work mainly consists construction of eight weirs across Yettinahole, Kadumanehole, Kerihole and Hongadahalla streams. These weirs are supported by other necessary components such as jack well, pumping machinery, raising mains, gravity mains and delivery chambers.

In phase two it is construction of gravity canal for a length of 273 + 865 km including an aqueduct of 12.5 km, storage reservoirs in beneficiary taluks, Balancing reservoir at Bairagondlu in Koratagere and construction of raising mains and the feeder canal. **Current Status of the Project:**

According to the officials in *Sakleshpur*, the construction work of the first phase of Yettinahole is that 85 per cent of the work is completed in Hassan Arsikere, Belur other regions. Expressing dissatisfaction over the progress of the Yettinahole project, Deputy Chief Minister D.K. Shivakumar said that the project

did not see progress at the expected pace in the last three and a half years. The second phase of the work is very slow progress.

What is the Controversy?

This ambitious drinking water project of the government has been controversial for many reasons; some of the major issues leading to controversy are based on the DPR submitted to the government. -

i) Availability of water for diversion

There is a controversy regarding the availability of water for diversion. According to the DPR prepared by the KNNL 24.01 TMC of water is available for diversion. Since the other study reports from the scientists and experts deny the availability of 24.01 TMC of water which can be diverted.

ii) Environmental Issues

Environmentalists and scientists argue that the project is being carried out in an ecologically sensitive region. The Yettinahole project can be devastating and can lead to ecological destruction and human-animal conflict.

Besides all these, the project violates all existing national and international laws for the environmental protection which was before the National Green Tribunal (South Zone) Chennai - Memorandum was submitted by H.A. Kishore Kumar – the president of Malenadu Horata Samiti. And has raised questions on environmental flow assessment in

Controversy regarding *Environmental Impact Assessment (EIA)*

The DPR of the project declares that the project does not need EIA because it is a drinking water project. The controversy arose because of the contradictions in the DPR. It declared it as a drinking water project but plans to fill MI tanks for recharging underground (DPR). The environmentalists suspect this project for having some

Irrigation plans in the name of the drinking water project. Because this

Project aims to fill 527 MI tanks up to 50 per cent.

Environmentalists claim EIA is necessary for the project because it has a hidden agenda for irrigation activities. (H.A. Kishore Kumar vs Union of India and others)

Litigations in National Green Tribunal

There are five litigations against Yettinahole project in NGT. The researcher was able to collect the details of three litigations for the present study.

Litigation-1**H.A.Kishore Kumar v/s Union of India and Others**

Application no,83of 2015 (SZ)

In the case H.A. Kishore Kumar V/s Union of India and others, the Memorandum of application was submitted under the Sections 14, 15 of National Green Tribunal Act 2010, which was applied in 2014, against the implementation of the project without environmental clearance under EIA 2006, the applicant had raised objections because of the serious environmental problems that could be caused in the future.

Application no of 215 (SZ) reveals certain facts of the project as mentioned in the DPR. Here the applicant had raised certain issues which could violate many other existing laws mentioned below:-

a) Issue on Construction of Weirs :

According to the petitioner , the weirs which are being constructed are; admittedly 8 to 10 meters high and are taller if measured from the base of the construction of the dam safety organization, Maharashtra declares that the dams with 15 meters high are the largest dams and the dams with less than 10 meters high are called as small dams. Therefore the clarification is asked from the MOEF about the structures that are called as weirs are dams with necessary storage or not.

b) Environmental Clearance:-

It is observed that the petitioner is demanding an environmental clearance under the EIA notification of 2006. It is stated in the application that the project is not purely meant for drinking water project for drought-prone districts as declared in DPR in page 34, 1.14 and it is clear that only 15.029 TMC out of 24.01 TMC is being used for drinking water purpose. Another 8.967 TMC is being used for filling 527 MI tanks up to 50 per cent for recharging underground water. The petitioner claims that filling of MI tanks up to 50 per cent can also be used for irrigation purpose.

1) Environmental impact of the project.

It is noticed that the petitioner discusses the violation of the order of the Supreme Court. The petitioner quotes the direction of the Supreme Court in the case of **Karnataka Industrial Areas Development Board Vs K.C Kenchappa & others** (7405 of 2000 dated 12 May 2006). In this case, the court directs that "The importance and awareness of environment and ecology are becoming so vital and important that we, in our judgment want the appellant to insist on the conditions emanating from the principles of 'sustainable development'. In the light of the above judgment, the petitioner argues that "before acquisition of lands for development the consequence and adverse impact of development on the environment must be properly comprehended

2) Impact of the project on flora and fauna which has not been assessed.

At the outset, in the application, it is said that the agency that had prepared (EIT RIP JV) is not an accredited consultant according to National Accreditation Board for Education and Training (NABET) scheme and this report could not be considered as the basis for any environmental decision-making process. The petitioner recognizes significant variations between DPR and feasibility report prepared by the same agency. Mentioned in page 14, of the Memorandum of Application, before the NGT (SZ) Chennai. Hence the DPR of the project was not prepared by a qualified agency. Sensitivity of the Western Ghats was not considered.

Hence the petitioner seeks justice from MOEF for not conducting a study on the environmental impact of the project.

c) Violation of wildlife Protection Act 1972

It is noticed that the petitioner asserting that the Western Ghats is the stretch from Gujarat to Tamil Nadu the habitat of endangered species like butterflies, fishes, amphibians, reptiles, mammals and birds. This region comes under the elephant corridor. Hence the petitioner is seeking clarification regarding the violation of the Wildlife Protection Act of 1972.

Violation of Biodiversity Act 2002 The Western Ghats is one of the 34 global hotspots of biodiversity and lies in the peninsular India in a series of hills stretching over a distance of 1,600 km. It is the habitat of 4000 species of flowering plants 330 butterflies' 156 reptiles' 508 birds 120 mammals. and 289 fishes. Hence it is stated that the central government can undertake measures like participation of the public in environmental impact assessment whenever there is a necessity of assessment

The project is against the following

- 1) Water Act 1974
- 2) The principle of intergenerational equity and sustainable development.
- 3) International environmental obligations.
- 4) Against the Forest Act 1986 5)

No public consultation was conducted.

Environmentalist and advocate H.A. Kishore Kumar has expressed regrets for the procedural delay that happened in the NGT. The tribunal took four years to deliver its final judgment. The tribunal admitted and continued judicial procedures without even issuing a stay order for the construction of the project. Most of the work on the project in the Western Ghats had already been completed by the time when the final judgment issued by the NGT. The petitioner said that the procedural delay in NGT and the government continuing the project work even after a case was filed in the NGT is an anti-environment and pro-development stand of the government.

Litigation-2

N.Somashekharvs Union of India and others

Application no,303 of 2014 (SZ)

There is another application filed by the environmentalist N. Somashekhar in 2014. There are substantial questions which were raised relating to the environment pertaining to statutory obligation of the respondent and the government authorities should take into consideration the huge impact of Yettinahole water diversion in the Western Ghats and the interest of the local community at large would be affected by it. And to conduct a detailed impact assessment according to the provisions of the Biodiversity Act 2002 and the Environmental Impact Assessment Notification 2006. The application was filed on the following grounds:-

i) Any water development project or hydroelectric project which includes more than 10,000 ha of command area requires environmental clearance of EIA. Since Yettinahole envisages more than 10,000 ha of command area, it requires environmental clearance.

ii) The project will have a wide impact on the biodiversity and river morphology and as a consequence people will be deprived of their livelihood. However, EIA and forest clearance is essential.

iii) Objection was raised against the beginning of the construction of the project even before obtaining the comprehensive impact assessment under the Biodiversity Act of 2002 and Environmental Protection Act of 1986 and it is based on the precautionary principle.

iv) Hence the petitioner requested an interim order of stay on the construction activities of the Yettinahole diversion project.

Response of the National Green Tribunal:

The petition filed by N. Somashekhar was dismissed by NGT, Southern Zone. The request to stop the construction of the project till a comprehensive environmental clearance is obtained is denied because request to a stay an order, it is barred by a limitation order Section 14 (3) of NGT Act 2010 for this reason that in essence, it seeks to challenge the approval granted by the central government dated 28 March 2013 based on the recommendation made by the EAC of the river valley and hydroelectric projects constituted under the Environment Impact Assessment notification 2006.

*The NGT had dismissed the case by pointing out that the petition is filed after six months from the date of insurance of the said communication by the central government before the National Green Tribunal, Southern Zone, Chennai, application no. 303 of 2014 (S2) mentioned in page 5.

On page.11, point 16 it is stated that it is true that no application for adjudication of disputes under section 14 of NGT Act 2010 can be entertained by the tribunal unless it is made within six months from the date on which the cause of action for disputes first arose. The petitioner was prevented by sufficient cause for applying within that period. The tribunal can allow the application to be filed a further period not exceeding sixty days and which can directly challenge EAC decisions in the court of law.

The order issued by Honourable Sri Chokkalingam, judicial member and Honorable Sri P.S. Rao, expert member had dismissed the grounds of exceeding the time limit of file the case. This is the second case to be dismissed by the NGT

**Litigation-3PurushottamChitrapurvs Union of India and
others**

Application no, 391 / 2016

In the case of, A. PurushottamChitrapur versus Union of India and others application no.391 / 2016 - before the National Green Tribunal. Principal Bench, New Delhi. The case was filed in NGT against the felling of trees for the construction of the project. It was because the felling of trees may be detrimental to the ecological sensitivity of the Western Ghats. The case came up for hearing only in 13 February 2019. The court order states "At the outset, the learned counsel for the respondent submits that a similar application. Where identical prayers were made, has already been decided by the Southern Zone Bench on 30 July 2015 in original application no.303 of 2014. The Forest Conservation Act in September 2016 the same has been challenged by a separate appeal no.54 of 2016).

In the view of this alone, nothing remains to be adjudicated in this case and there for the same is dismissed with no order as the cost.

Here it is observed that the ground for dismissal is very simple and short. According to the petitioners, the procedural delay of almost three years to issue final order without issuing a stay order to the construction of the project. It was the experience of the petitioner and the advocate. There is a political influence behind the procedural delay of the NGT. Otherwise, it would have not taken such a long time to dismiss the case on such simple grounds.

Impleading application : Sri M. Venkat and others

Vs

State of Karnataka and others

Application no,83of 2015

Apart from the cases in the National Green tribunal, an impleading application was filed by Sri M. Venkat resident of BevahalliKolar district, and a resident of Yennur village Chikkaballapur district and V. Darshan, resident of BarajanKente village Chikkaballapur district have requested the court not to consider this case favourably. In this application, the severe drought situations of the drought-prone regions are explained to the court with all supportive documents. However, all five cases filed in the National Green Tribunal challenging the projects were dismissed by the court application no.83 of 2015.

Here, it is observed that the National Green Tribunal is meant to resolve the disputes and to take decisions in favour of environmental protection. But as the retired IAS officer and leading environmentalist, V.V. Bhat, States most of the judgments given by the NGT are not usually in favour of the environmental protection butit is in favour of development project. Similarly, all cases challenging the project were dismissed considering it has least adverse impact on the environment.

Conclusion:

Throughout the study, it is observed that there is no compatibility between development and environment. The case is similar with Yettinahole project also. Several policies to protect environment and bio diversity have been diluted and human needs accordingly to dominant notion of development are prioritized. According to a retired IAS officer, who filed a case against Yettinahole project in National Green Tribunal said that the tribunal has failed to perform its duties. According to an advocate who took interest in case filed in NGT says that the NGT Act does not comprise any laws to solve interstate dispute like Yettinahole project. The efforts of the environmentalists to seek justice from the NGT failed due to procedural delay and it is unfortunate that the movement against the project did not get the support of local people whose land is purchased for the project by giving huge money. Closure of the door on three important ways – one is slow and procedural delay by NGT and another is huge amount paid to the locals for land purchasing and third one is scarcity of funds for these organizations to continue protest for long period of time. These factors led failure of the environmental movements and the win of development politics specifically with regarding Yettinahole project. The National Green Tribunal Act (2010) found to be with inadequate legal framework to deal with inter- region water disputes.

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