



Green Benches in India: The Anatomy of the National Green Tribunal Act, 2010

Rohini Attri, Lecturer, LL.M (Gold Medalist), PhD pursuing, Department of Law,
Punjabi University, Patiala

Abstract: Environmental issues have always been a global concern. 'Green Courts', 'Environmental Courts' or 'Green Tribunals' have been established in different countries to specifically deal with the environment related litigations. In India, Supreme Court has equated the right to a clean environment with the Right to Life under Article 21 of the Constitution. Based on these outlines and on its commitments, the National Green Tribunal Act, 2010 was enacted to ensure expeditious disposal of cases relating to environment. Historically, various International and National efforts have been made to protect the environment and to establish environment courts for this purpose. The National Green Tribunal Act is a path breaking legislation which is wide in scope and provides a new dimension to environment adjudication by curtailing delays and imparting objectivity by applying the principle of no fault liability. The Tribunal provides variety of reliefs and compensation, including restitution of the property damaged and restitution of environment, to victims of pollution and other environmental damage. It is the first body of its kind that is required by its parent statute to apply the 'polluter pays' principle and the principle of sustainable development. Although this existing legislation suffers various loopholes but it can be viewed as a positive step towards the environmental justice.

Keywords: Environment, Green Tribunal, Green Benches, Green Courts, NGT Act

Introduction

Environmental issues have always been a global concern. 'Green Courts', 'Environmental Courts' or 'Green Tribunals' have been established in different countries to specifically deal with the environment related litigations and in order to achieve good governance in relation to environment. It is a matter of common knowledge that the higher judiciary in India is overburdened with a large backlog of cases. It may be appreciated that in order to have effective prevention of environmental pollution environmental complaints should be decided expeditiously which is not possible in the present context of judicial administration. Therefore, there has been an urgent need for an alternative forum

so that environmental cases were decided without much delay. The Apex Court had also shown deep concern over the desirability to have the setting up of environmental courts to resolve issues specifically relating to environment. A similar view was expressed by some of the prominent jurists of the country. The present research is purely an analytical and doctrinal research which makes an attempt to find out that how far the legislative step to ensure environmental justice through the establishment of National Green Tribunal is conducive to the present day situation.

Background: The first ever global environment conference adopted the action plan, known as 'The Stockholm Declaration 1972', emphasized the global



need for appropriate steps to protect and improve environment. It is often described as the International 'Magna Carta' of our environment. Consequent to this, a new Article 48A was inserted to the Indian constitution and various legislations were enacted and passed by the Indian Parliament in consonance to that. *The United Nations Conference on Environment & Development, Rio de Janeiro 1992*, also known as the Rio Conference, called upon governments to assess enacted laws and regulations with a view to make them more effective, establish judicial procedures, remedy actions affecting environment and development, establish legal reference, and support services and cooperative network for sustainable development. The Rio Declaration on Development and Environment states that "*states shall develop the national law regarding liability and compensation for the victims of Pollution and other environmental damage*". During the Rio De Janeiro summit of United Nations Conference on Environment and Development in June 1992, India vowed the participating states to provide judicial and administrative remedies for the victims of the pollutants and other environmental damage.

These international instruments have exhorted the members of the International Community including India, to take appropriate steps for the protection and improvement of human environment. To give effect to the above directive and to provide for a forum for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance, the Indian Parliament enacted the National Green Tribunal Act, 2010.

Status of Green Courts in India

In India some initial legislative support for creating the National Green Tribunal already existed in the form of the National Tribunal Act 1995, though this went unimplemented, and also the National Environmental Appellate Authority Act 1997. The 1997 Act authorizes the limited role of examination of the complaints regarding environmental clearances. However, since 2000, no judicial members have been appointed under the 1997 Act. The Act seeks to replace the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 which have been in operation for some time in the country. The Act has been enacted in response to the recommendations of the Law Commission of India and the Indian Supreme Court which highlighted the large number of environment – related cases pending in the courts.

The concept of environmental courts was initially and positively addressed in two notable judgments of the Supreme Court of India. In *M C Mehta v. Union of India* the Supreme Court stated that as environmental cases frequently involve assessment of scientific data, it was desirable to set up environmental courts on a regional basis with a legally qualified judge and two experts, to undertake relevant adjudication. Similarly, in *Indian Council for Enviro-Legal Action v Union of India* the Supreme Court again floated the establishment of environmental courts with both civil and criminal jurisdiction in order to deal with environmental issues in a speedy manner. Again, in the judgment of *A.P Pollution Control Board v Professor M V Nayudu* the Court referred to the need



for established environmental courts. Such courts would have the benefit of expert advice from technically qualified environmental scientists, as part of the judicial process. These judgments were a result of concern within the Supreme Court about complexity and uncertainty underpinning the scientific evidence presented to the court.

In pursuance to these observations made by the Supreme Court, the law commission was suggested to examine this matter in detail and consequently, in its 186th Report, the Law Commission recommended to set up 'multifaceted' Environmental Court in each state of India, with judicial and technical/scientific experts, as they exist in other countries like New Zealand and Australia.

According to a report, the total number of cases received by the National Green Tribunal since its establishment till 31 January 2015 was 7760. Out of these, the total number of cases disposed of till 31 January 2015 were 5167 and the remaining 2601 were pending.

The National Green Tribunal Act, 2010

After years of deliberation, the National Green Tribunal Bill was introduced in the Indian Parliament on July 29, 2009. The bill provides for the establishment of a Green Tribunal, which will offer effective and fast redress of cases relating to environmental protection and conservation of natural resources and forests. Thus, National Green Tribunal was established on 18th October 2010 under the National Green Tribunal Act 2010. National Green Tribunal is thus a new beginning for India's struggle between development and environment.

The object of the Act is to give effect to its International obligations arising out of various decisions taken at International Conferences to which India has been a Party and also to implement the Indian 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. 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 striking feature about the Act is its composition which consists of both Judicial and expert members. The judicial members will have been or will be judges of the Supreme Court or the High Court of India. This reflects the significant, perceived status of the Tribunal and constitutes a commitment that the judicial bench will have the requisite legal expertise and experience. Expert members will include either technical experts from life sciences, physical science, engineering or technology. Interestingly, there appears to be no room for social scientists with appropriate specialization or familiarity with environment or occupational risk. Members will need practical experience of not less than five years or will be an administrative expert with not less than 15 years experience of dealing with



environmental matters. The minimum number of full-time judicial and expert members will not be less than 10 with a maximum of 20 to each bench. The Chairperson of the Tribunal will be appointed by the central government in consultation with the Chief Justice of India. Members will be appointed on the recommendation of a selection committee in such manner as may be prescribed by the central government.

The Tribunal has original and appellate jurisdiction to settle environmental disputes. The original jurisdiction covers all civil cases in which a substantial question relating to the environment is involved and which arises out of enactments specified in Schedule 1 of the NGTA. The expression a substantial question" has been defined as an instance where there is a direct violation of specific environmental obligation affecting either the community at large other than an individual or group of individuals by its environmental consequence or where the gravity of the damage to the environment or property is substantial or (iii) where the damage to public health is broadly measurable.

The Act provides for various kinds of relief. It says that the Tribunal may, by an order, provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule-I to the Act, including accident occurring while handling any hazardous substance. It may also order the restitution of the property damaged and the restitution of the environment for that areas as the Tribunal may think fit. The relief under this Act is an addition to the relief given under the Public Liability Insurance Act, 1991. The Act seeks to discourage delayed

applications for relief. It stipulates that no application for the above mentioned categories of relief would be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such relief first arose. However, the Tribunal may allow further sixty days for the application to be filed if it is satisfied that the applicant was prevented by sufficient cause from filing such application. The Act obligates the claimants under the Act to intimate to the Tribunal about the application filed to, or as the case may be, compensation or relief received from, any other court or authority. The Act provides for no fault liability in case of claims involving an accident by authorizing the Tribunal to apply the Principle of no fault. The Act provides for an expeditious relief. It requires the Tribunal to deal with the applications or, as the case may be, appeals, as expeditiously as possible and obligates the Tribunal to endeavor to dispose of the application or, the case may be, an appeal finally within six months from the date of filing the application, or, as the case may be, the appeal, after providing the parties an opportunity to be heard. Any person aggrieved has standing including, with the permission of the Tribunal, a representative body or organization functioning in the field of the environment, making the provisions sufficiently wide to allow enforcement by non-governmental organizations (NGOs) of all legal rights relating to the environment.

The Act provides that an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by —(a) any person who has sustained the injury; or (b) the owner of the property to which the damage has



been caused or (c) all or any of the legal representatives of the deceased where death has resulted from the environmental damage or (d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or (e) any person aggrieved ; including any representative body or organization. In addition, the Central Government or a State Government, or a Union Territory administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local Authority or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time in force, can also move the Tribunal.

It is mandatory for the Tribunal to apply the foundational principles of India's environmental jurisprudence, namely, the principles of sustainable development, precaution and the polluter pays principle. The decisions of the Tribunal are taken by majority of its members and they are binding on the Parties. The Act provides for an appeal to the Supreme Court of India by any aggrieved person concerning the award or order passed by the Tribunal. The Act declares that the orders, decisions or awards of the Tribunal shall be executable by the Tribunal as decrees of the Court. For this purpose, the Tribunal shall have powers of a Civil Court. The members of the Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian penal code. They are given immunity from any suit or prosecution or any other legal proceeding for anything done in good faith in pursuance of this Act.

Statistical Analysis of Working of NGT

The WWF-India is a Charitable Trust to further the mission to stop the degradation of the planet's natural environment and build a future in which humans live in harmony with nature. According to the Centre for Environment Law, which is an integral part of WWF-India, Since its inception in October 2010, the statistical analysis shows that the Tribunal has been successfully upholding its mandate as a 'fast-track Court' for effective and expeditious disposal of cases relating to environmental protection and conservation. It further indicated that the percentage of judgments pronounced by NGT from May 2011 to February 2015 covers 32 per cent of cases relating to pollution and 26 per cent relating to issues concerning environment clearances.

According to another report, the total number of cases received by the National Green Tribunal since its establishment till 31 January 2015 was 7760. Out of these, the total number of cases disposed of till 31 January 2015 were 5167 and the remaining 2601 were pending.

Judicial Role of the NGT

The NGT Act provides for a judicial procedure. Immediately after the establishment of NGT, it started taking up different matters involving environment issues. The National Green Tribunal in its decisions/ orders has been applying principles of sustainable development; polluter pays principle and precautionary principle. Thus, its decisions/ orders are in consonance with section 20 of the NGT Act, 2010. Some of



the cases decided by the NGT are as under:

The National Green Tribunal has shown serious concern for providing wrong information in the Environment Impact Assessment (EIA) reports. In *N. Chellamuthu v. The District Collector*, the NGT set aside the environmental clearance granted to the municipal solid waste processing plant of Municipal Corporation of Chennai for providing false information in the Environment Impact Assessment (EIA) reports. Similarly, in the case of *Hussain Saleh Mahmad Usman Bhai Kara v. Gujarat State Level EIA Authority and others*, the NGT suspended environment clearance to Scania Steel and Power Ltd. for expansion of its sponge iron plant in Chhattisgarh in the absence of public hearing. In this case, the tribunal directed the Ministry of Environment and Forests (MoEF) to develop proper mechanism to check the authenticity of environmental data. It further directed to blacklist those Environmental Impact Assessment Consultants who provide the wrong data.

In *Goodwill Plastic Industries and Anr. V. Union Territory of Chandigarh and Ors.*, the constitutionality, legality and correctness of the notification issued by the Administrator, Union Territory of Chandigarh, prohibiting usage, manufacture, storage, import, sale or transportation of polythene/ plastic carry bags in the U.T. of Chandigarh was challenged on the ground that the impugned notification issued was repugnant to the Plastic Waste (Management and Handling) Rules, 2011 and thus would be inoperative. The Tribunal applied the doctrine of pith and substance, and upheld the constitutional

validity of the impugned notification and held that both these notifications are complementary and supplementary to each other and re-enforce the principal object of protection and improvement of the environment.

Vardhaman Kaushik v. Union of India and Others, is a unique case in which the NGT has adopted the pragmatic, consultative and deliberated approach for resolving the serious menace of air pollution in the city of Delhi. The Tribunal noted that there are three primary sources causing serious air pollution in the NCR Delhi. They are (1) Dust, (2) Burning of plastic and other materials including leaves in the open areas and (3) Vehicular Pollution. Taking into consideration the gravity of problem, the NGT also issued various directions in this regard.

In *Vikrant Kumar Tongad v. Delhi Tourism and Transportation Corporation and Others*, the important question before the tribunal was whether the construction of the 'bridge' across the Yamuna is a 'project' or 'activity' that shall require prior Environmental Clearance from the Regulatory Authority, particularly with reference to Entry 8(a) and/or 8(b) of the Schedule to the Environment Clearance Regulations 2006. The Tribunal after considering the entire law on the point directed the respondent to obtain Environmental Clearance for the project in question. Since the major part of the project had already been completed, the Tribunal did not direct demolition of the bridge in public interest. However, it directed the State Level Environment Impact Assessment Authority (SEIAA) to put such terms and conditions as may be necessary to ensure that there are no



adverse impacts on environment, ecology, biodiversity and environmental flow of River Yamuna and its floodplain.

The recent news report of World Culture Festival by the Art of Living Foundation being organized at the flood plains of River Yamuna came under the scanner of the NGT after petitions were filed demanding its cancellation. The NGT imposed a fine of rupees five crores and also to bear the cost of restoring the area into a biodiversity park after the completion of the event, holding it responsible and liable for the damage caused to the environment, ecology, biodiversity and aquatic life of the river. The Art of Living has claimed that it has not violated any rules and it would file an appeal in the Supreme Court against the fine.

The NGT has been pro-actively contributing its role towards the improvement and protection of the environment time and again. It is submitted that a perusal of the above mentioned orders of the NGT shows that its approach in deciding various environmental issues in consistent with the principles of sustainable development, the precautionary principle and polluter pays principle are envisaged under section 20 of the NGT Act, 2010.

Critical Appraisal of the NGT Act

While the Act envisages the conferment of wide jurisdiction on the Green Tribunal, it also, at the same time, seeks to restrict the scope of its jurisdiction only to matters involving substantial, questions, relating environment. Further, Schedule 1 of the NGT Act finds mention in the above mentioned section. It is expressly stated that the tribunal shall

have jurisdiction only over the matters where the environmental question arises out of implementation of enactments specified under *schedule I*. The tribunal can only be approached for implementation of eight enactments specified and the same cannot take into jurisdiction, the matters outside the specified enactments like the Wildlife (protection) Act, 1972.

The 'administrative experience of 15 years' clause also raises significant issues based on the historic field performance of such officers. There is a concern that these qualifications will allow the Tribunal to become a potential retirement home for senior civil servants who are not necessarily best placed to curb environmental maladministration.

Again, it is doubtful whether the jurisdiction of the High Courts which are the constitutional courts can be excluded either by ordinary legislation or by a constitutional amendment as their power of judicial review is a part of the basic structure of the Constitution. The tribunal is devoid of the power to quash any clearance granted to anyone or order by the virtue of which environmental damage is being caused. The same can only order costs and restitution of property and is inefficient to stop the disputed activity. The section does not cover broad injury or relief to the community. The same is limited to just individual restitution and compensation. The act provides jurisdiction for matters concerning communities at large but fails to provide the power to grant relief for the same.

Also the tribunal has no jurisdiction over the cases which involve the quashing of orders or the activity as a whole when the



clearances have been granted by any authority without proper application of mind. The tribunal set up though covers environmental issues, but at the same time complicate the selection of appropriate forum for filing of a case involving questions of environmental law.

The establishment of the National Tribunal has not been without controversy. A law student has filed a writ petition with the Madras High Court, seeking to declare the National Green Tribunal Act unconstitutional. The petitioner contends that the High Courts had exercised their writ jurisdiction to provide remedy in cases involving substantial questions related to the environment, and that the blanket ban imposed on the civil courts' jurisdiction "expressly and the High Courts impliedly" under the new Act would be impermissible in law and would severely affect the right of access to justice to the poor and the needy.

Conclusion and Suggestions

The NGT is the most consistent and progressive environmental authority in India. It had redefined the role of environmental experts and the criteria to select such experts. An analysis of the NGT's role over the years suggests that it has been progressive in its approach towards environmental protection in general and the rights of marginalized people in particular. The NGT has not only come down heavily against microstructures but has also challenged the big corporate sectors and the central and state governments for not following environmental regulations.

Environmental activists hope that the National Green Tribunal will continue to

address the unequal distribution of environmental goods and burdens and protect the rights of underdogs as it has done so far. To ensure appropriate responses to environmental litigations, however, the Indian government should lay down guidelines for the effective exercise of powers by the NGT. The decisions of the Tribunal and expert groups should be respected and implemented by all other government departments. If this happens, the NGT's role will benefit India's long term environmental improvement. There should also be stringent guidelines in place for the appointment of expert members to the Tribunal based on the suggestions of different environmental groups, legal experts, judges, and academics. The entire process should be transparent and amenable to public scrutiny and review by judicial bodies and experts from different backgrounds, including scientists, technicians, judges and NGOs.

In order to be able to entertain petitions and prevent frivolous environmental litigations, the Tribunal should be equipped with all the resources required for scrutinizing and reviewing petitions and investigating the intentions of petitioners who seek its attention. Its function should be more transparent than the Supreme Court's in environmental cases.

Further, the institutions involved in resolving environmental disputes, whether the Supreme Court or the National Green Tribunal, need to be strong and effective in ensuring that their directions are implemented. Implementation should not be done through monitoring committees. Many judges believe that the Court should not



seek to implement its directions through the use of monitoring committees as this makes the Court an investigative rather than adjudicative agency. Courts and the NGT should lay down strict conditions for the implementation of environmental judgments, identify the executive agency responsible for carrying them out, and ensure the accountability of the agency if it fails to follow directions. The Supreme Court and the National Green Tribunal need to fix responsibility on these implementing agencies..

The legal framework also needs to be comprehensive and suitably designed for objective interpretation of environmental laws and policies. There is a plethora of legislations on environmental issues in India but many of them date back to the pre-independence era and do not correspond to the policies or realities of the post-independence period. As a result, they need to be reviewed and consolidated. The Forest Law of 1927, and the Waste Claims Act, 1863, in particular, need to be reviewed in order to bring them up to date with the constitutional proclamations of environmental protection. The requisite amendments should be made to the existing law in order to overcome the lacunae so that the real objective of the Act could be achieved in its true letter and spirit.

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