

ADJUDICATING ENVIRONMENTAL DISPUTES WITH SPECIAL REFERENCE TO NATIONAL GREEN TRIBUNAL: AN ANALYSIS

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Abstract

“Earth provides enough to satisfy every man’s needs, but not every man’s greed” —

Mahatma Gandhi

The growth of mankind has led to the degradation of the environment. Call for environmental protection is growing with each passing year. Complex environmental issues are being discussed heavily in global conferences. Pledges for environmental protection and its alleviation has been taken by almost everyone residing on the globe. But the scenario doesn't seem to change even a bit. In a populous country like India, certain unique issues arise as majority of the Indians follow the principle of ‘anthropocentrism’, whereas the regulators sometimes favor corporate-centrism. Indian Courts, especially the NGT have fundamental in changing tone of environmental protection, ever since its inception. Issues like disappearance of urban lakes, pollution due to fireworks, hazards of kite flying, supply of drinking water to cold-drink manufacturing companies, overzealous pet or bird lovers causing pollution in houses, attempt of automobile companies to release vehicles with old emission standard and felling of trees etc. reveal the rainbow spectrum of the issues arising before it.

Keywords: Environmental Protection, Environmental Hazards, Supreme Court, National Green Tribunal (NGT).

1. Introduction:

We, human boast to be most advanced breed among all the living beings. We brought the concept of modernity to the civilization. The civilization has taken numerous steps before attaining this milestone. But, in none of these several steps the cost was so dearer as is in the case of journey towards modernity. Modernity brought many sudden environmental challenges to the world. Mass deforestation, rapid urbanization, heavy industrialization, greedy mining, riding on wavelength, emission of various gases, etc has changed the way nature was in the earlier times. Today, the World has to face the challenge of Environmental Protection. Every year, we are witnessing complex environmental issues arising from almost every part of the globe. This year is no exception. In a populous country like India, certain unique issues arise as majority of the Indians follow the principle of ‘anthropocentrism’ whereas the regulators rely on corporate-centrism. The year under survey also has witnessed certain major challenges to the ecological and environmental protection in India. They included issues like disappearance of urban lakes, pollution due to fireworks, hazards of kite flying, supply of drinking water to cold-drink manufacturing companies, overzealous pet or bird lovers causing pollution in houses, attempt of automobile companies to release vehicles with old emission standard and felling of trees etc. Government, which has brought statutory framework is yet to wake up to the realities of non- implementation of these rules and regulations throughout the country. No one is least concerned about the rules to protect environment. But, time and again the adjudicating bodies, such as the Apex Court of India, various High Courts & the NGT, etc. have jumped within scene for environmental protection.

At this place the environmental challenge in our country has been fundamentally mirror from below progress, gallop-population, accumulation deficiency and a need for substantial industrialization destitute of environmental consideration. At this time, human’s factions to defend the atmosphere and livelihood are known as new model of growth which affords for the benefits of everyone exclusive of strip the eco-system and obliterating livelihood.

The extensive explanation of ‘Life’ in Article 21 of the Indian Constitution has to the constructive progress of environmental jurisprudence in India. While a number of laws

have been passed by a vision to care for environment beside pollution and executive mechanism have been place in put used for the principle of actuation of these laws, the adverse truth residue that the government have completed not anything existing toward falling environmental pollution.

During the ‘Rio Convention 1992’ India called for making of a legal and executive bodies just before protect sufferers of contaminants and other environmental losses. There are several reasons behind the establishment of this tribunal. Following India’s move with carbon credits, such tribunals can play an important role in ensuring regulates of discharges and maintains preferred stages. It is the first organization of its kind that is necessary by its father law to implement the “polluter payment principle” and the “principle of sustainable development”. As such the NGT was created as watchdog used for evolution, maintenance and gradual enhancement of exclusive environmental jurisprudence in India.

In the light of Apex Court’s suggestion in 2003, the Act planned for the manufacture of specific Environment Court, which has both the jurisdiction like original as well as appellate associated to environmental problem. It took seven years since the Apex Court of the country made specific averments about necessity of such court. The NGT law has endorsed since 2010. This Law rippled the National Environmental Tribunal Act-1995 and National Environmental Appellate Authority Act-1997.

This issue of environmental protection was also considered through the Law Commission of India and deal at extent in its 186th Report¹.

The commission, which present its report on September 2003, made recommendations on how new Environment Courts should be set up along with the existing Environment Courts and Tribunals. The Law Commission report was serious of the implementation of the presented Environment Courts. The report states as follows:

“Thus these two National Environmental Tribunals are regrettably nonfunctional today. One only had jurisdiction to pay compensation and in fact it never came into existence. The second one came into subsistence but no

¹ Law Commission of India, 186th Report, suggestion to established Environment Courts, September 2003.

one has been selected even after the term of the first president is over.”

Law commission suggested to institute special Environment court like New Zealand and South Wales and also pragmatic that the Apex Court of India, give same observation in some landmark cases like namely “*M.C. Mehta v. Union of India*,² *Indian Council for Environmental Legal Action v. Union of India*³; *A.P. Pollution Control Board v. M.V. Nayudu*⁴ and *A.P. Pollution Control Board v. M.V. Nayudu II*⁵.”

The Law Commission also consider the suggestion given in the *Nayudu-I* case to the design of a ‘*Multifaceted*’ Environmental Court which have legal and scientific/systematic input as formulate by Lord Woolf in England lately and to Environmental Court legislations as they be present in Australia, New Zealand & other nations. The report also accepted the observe of the Environmental Courts in Australia and New Zealand which occupation as court of appeal alongside guidelines pronounced under the subsequent Water Acts, Air Acts and Noise Acts and different Environment associated Acts and also have original jurisdiction. They have all the powers of a Civil Court. Some have even powers of a Criminal Court.

2. National Green Tribunal in India:

The NGT was instituted since 10th Oct. 2010, later than actuation of the Act which is called ‘the National Green Tribunal Act-2010. It was instituted for the efficient and speedy discarding of cases concerning to environmental protection and preservation of forests and other natural resources, with enforcement of any lawful right concerning to the environment and to provide aid and reimbursement for losses to people and assets matter related therewith or supplementary thereto. It is a specific agencies prepared with the essential expertise to handle environmental dispute concerning multidisciplinary issue. The Tribunal shall not be bound by the process mentioned in under the Code of Civil Procedure, (CPC) 1908, but shall be governed by the doctrine of natural justice.

² AIR 1987 SC 965.

³ (1996) 3 SCC 212

⁴ (1999) 2 SCC 718.

⁵ (2001)2 SCC 62.

2.1 Aim of the Act

The preface of the Act held that the aim is to afford for the institution of a 'National Green Tribunal' (here referred as NGT) for the efficient and speedy discarding of matters concerning to environmental safety and protection of forests and other natural resources counting enforcement of any lawful right concerning to environment and giving aid and recompense for indemnity to people and assets and for issues associated therewith or attendant thereto.

The NGT Act is also an undertaking of the Parliament under Article 253 of the Constitution of India interpret with Entry 14 of first List of 7th Schedule to execute the responsibility of India towards Stockholm pronouncement, 1972 in which India participate, profession upon the countries to take suitable steps for the safety and development of the person environment and Rio Declaration, 1992 in which India contribute, profession upon the nations to grant efficient admission to judicial and executive procedures, include remedy and preparation to progress central laws concerning accountability and reimbursement for the sufferers of pollution and other environmental losses⁶.

2.2 Formation of National Green Tribunal:

The NGT in India constitute of judicial and expert members who collectively supervise over the judgments of cases scheduled before them. The tribunal has progressed the assurance of the community at huge and has realized consummate achievement in convey environmental justice. It has guaranteed that all individuals pretentious by increasing environmental degradation, be it wind, water or forests, can seek redress to enforce their rights. It has listening carefully on speedy and effective disposal of cases. Since January 2020, there has been a 200% increase in registration of cases and disposal of cases at the rate of 280% as compared to 2012.

In this time NGT have five branches including principle branch which is statured at New Delhi and other four benches at Chennai, Bhopal, Pune and Kolkata. Allowing for the required to obtain execution of justice to the door to door of the precious public, the

⁶ *Subhash Kumar v. Bihar*, AIR 1991 SC 420.

National Green Tribunal has frequently detained circuit benches at Shimla, Shillong and Jodhpur. I consider that the organizational potency along with the new structure at Faridkot House New Delhi, is critical in satisfying our motto of conveying efficient environmental justice.

Admission to justice before the tribunal is simple and economical. Anyone aggrieved people and or else can appeal to the jurisdiction of the NGT under the Sections 14 to 16 of the National Green Tribunal Act. Moreover, the governmental intention, tribunal has constructed 'speedy disposal' of matters its aim. Each attempt has made to order of the issues less than six to eight months of their filling. This serves the double reasons of plaintiff pleasure and Sustainable progress with appropriate safety of environment.

The National Green Tribunal has developed in different proportions and has previously contributed considerably to the progress of the environmental jurisprudence not just in the local sphere, but still internationally.

Specified the current situation, it is significance declaring the natural particular contributions and methodical technique implemented by the tribunal's specialist members in declaration of subjects concerning miscellaneous issues to achieve scheme of environmental jurisprudence. The National Green Tribunal having finished difficult responsibilities ranging from judicial and executive perspectives have progressed itself as a Tribunal of municipal and global significance.

3. The Members of National Green Tribunal

According to the NGT Act, it has three types of members prescribe first Chairperson, second Judicial members and last third one is Expert members. In this tribunal there maximum and minimum numbers of members are fixed by the Act. Maximum no. of judicial or expert members is 20 in each group and minimum numbers of members are 10 in each above group. One specific important provision in this Act that if chairperson of the tribunal required some specific knowledge person in specific subject matter, he may invite any one or more person related to these concerned subject matter in a particular case before the tribunal for assist to tribunal.

Eligibility for selection of Chairperson, Judicial Member and Expert Member⁷:-

- An individual shall not be fit for engagement as the Chairperson or Judicial Member of the Tribunal except he is, or has been, a Judge of the Apex Court of India or Chief Justice of the High Court: afford that a individual who is or has been a Judge of the High Court shall also be capable to be appointed as a Judicial Member.
- A individual will not be fit for appointment as an Expert Member, except he,-
 - a. Degree in Master of Science (in Physical Science or Life Science) with Doctorate degree or Master of Engineering or Master of Technology and fifteen years knowledge in relevant field together with five years practical practice in the area of Environment and Forests. (Including pollution organize, hazardous substance management, environmental impact assessment, climate change management, biological diversity management and forest conservation) in a perceptible national level organization; or
 - b. Fifteen years' organizational knowledge including five years' knowledge in dealing with environmental issues in the Central or State Government or any presumed National or State level institution.
- During tenure of the NGT any members like the Chairperson, Judicial members and Expert members of the tribunal shall not hold any office of profit.
- The president and other judicial and proficient members shall not, for a time of two years on or after the date on which they hold workplace, accept any individual belonging to or related with the organization or admin of any individual who is a party used to be. Affairs before a Tribunal under this Act: if that not anything enclosed in this section shall any service in the Central Government or a State Government or a local authority or any statutory authority or any corporation recognized by or under any Central, State or Provincial will not apply. Act or Government 'company' as defined in section 617 of the Companies Act, 1956.
- engagement of the Chairperson, Judicial Member and Expert Member: –
 - a. Subject to the condition of section 5, the Chairperson, Judicial Members and Expert Members of this Tribunal shall be prearranged by the Central administration.

⁷ National Green Tribunal Act 2010, s. 5

- b. The Chairperson shall be selected by the Central executive in conference with the Chief Justice of India.
- c. The judicial members and expert members of this Tribunal shall be selected on the approval of such assortment committee and in such method as may be approved.
- Term and condition of job of Chairperson, Judicial Member and Expert Member.
 - ❖ The Chairperson, Judicial Members and Expert Members of this Tribunal shall hold office for a period of five years as of the date on which they presume their office, but shall not be appropriate for reappointment:
 - ❖ if that proviso any individual, who is or has been a Judge of the Apex Court of India, has been selected as the Chairperson or a judicial member of the Tribunal, he shall not hold office after he has achieved the age of seventy years:
 - ❖ if additional that in case an individual, who is or has been the Chief Justice of any High Courts, have been selected as Chairperson or Judicial Member of this Tribunal, he will not hold office after he has achieved the age of sixty-seven years: afford that also in case a individual, who is or has been a Judge of a the High Courts, have been selected as Judicial Member of this Tribunal, he will not hold office after he has achieved the age of sixty-seven years:
 - ❖ When any Expert member attained age of sixty- five years he will not hold office of this tribunal.

4. Jurisdiction of the National Green Tribunal:

The Tribunal's devoted jurisdiction in environmental issues shall afford rapid environmental justice and help decrease the encumber of lawsuit in the upper courts. The Tribunal is Thesaurus to construct and effort for discarding of submission or petition lastly inside six months of file of the similar.

The NGT, thus represent, movements unique power under Section 14 with jurisdiction to resolution all civil cases where a extensive issue concerning to environment is complicated and such issues obligation begin below any of the seven performing specified under dissimilar agendas.

It has participated a vital character in the growth and enforcement of legislation connected to the environment by ephemeral a number of guidelines to the Central and State Governments and other private business things.

The NGT, composed under the NGT Act, 2010, has approach in current period to gain full jurisdiction in the matter of environmental protection in India. One of the repeatedly asked questions is whether the NGT can pass an ex- parte interim order without hearing the party disturbed. In *KK Rocks & Granites India (P) Ltd v. Latha*,⁸ the Kerala High Court in a case relating to granite quarrying painstaking the authority of staying the operation of environment clearance without hearing the party concerned. In the present case environmental clearance for renewal of quarry charter was achieved by the supplicant from the State Environment Impact Assessment Authority. The first respondent disputed the environmental approval before the Tribunal in a petition under the Act and the Tribunal continued its procedure exclusive of charitable notice to the requester. The petitioner confronts the order on the ground that the Tribunal has no jurisdiction to pass a provisional order ex-parte in any issue. The petitioner argued that the Tribunal is a being of law, it is bound by the requirements of law, and in illumination of Section 19(4)(i) of the Act which provide that a provisional order can be delivered by the Tribunal concerned. Only after giving the parties a chance of being heard, the Tribunal cannot deliver an 'ex-parte' provisional order.

The High Court held that as seen since Section 19 of the NGT Act, although the Tribunal is not spring by the process prescribed by the Code of Civil Procedure, 1908, the statute present that the Tribunal shall be directed by the doctrine of natural justice. Section 19(4) of the Act grants on the Tribunal the similar power as have appereled in a civil court under the Code of Civil Procedure, 1908, in respect of issues mentioned therein for the reason of to carry out its functions, whereas section 19(4) The Act gives that the Tribunal shall have the similar supremacy as is appereled in a civil courts in the issue of delivering an temporary order, with a condition that an temporary order will be deliver by the Tribunal simply later than giving an chance to the parties concerned. Thus, it is clear from the format of the Act that the purpose of the parliament was to grant power on the

⁸ 2017 (7) FLT 7 (Kerala HC).

Tribunal to deliver temporary orders merely later than giving an opportunity of being heard to the parties concerned. The said objective of the parliament is also understandable from the proviso enclosed in section 19(1) of the Act to the Tribunal will be governed by the theories of natural justice. Under the conditions, it was held that the Tribunal have no jurisdiction to deliver temporary orders lacking trial the exaggerated party.

The exclusive character of the Nation Green Tribunal is not merely that both judicial and expert members be seated simultaneously to make decision environmental matters, except they are certain the same contribution so as to facilitate a suitable legal decision with an expert intelligence. Consequently, that instead of deciding environmental issues only on legal basis, the order should deliver exclusive, authentic and actual explanation of environmental matters with genuine needs and make it authentic and legally enforceable. The Act constructs it obvious that the order of the National Green Tribunal is judicial in character. This is obviously explicated in section 19(5).

At present the National Green Tribunal solve every issue speedy, chief and specific manner and focusing on '*ex debito justitiae*', its mean significance of justice only be it the issues of make safe of sundarabns managing of electronic waste or obligation of fine on Grame-pradhan for cut down trees. After observing all things, we find that the tribunal is a quasi-judicial organization which is continues work for protection of environment. While one hand its punish to wrongdoers those damages environment on other hand its spread awareness in person conduction conferences and different things. It has to contract with further grave matters in close to future as world are situation new parameter to care for the Environment and Paris Agreement on climate change is one such example. According to official website of NGT says that **total no. of cases field 35060 including principle and all benches in which 32651 cases disposed and 2409cases are pending only** till 30st May2021⁹.

When we see eleven years (approx.) NGT journey I find that the tribunal works well, but there are many developments are still need to become more approachable, quickly and efficient remedies related to environmental issues in practically séance. The tribunal must be strengthened and not undermined. On its part, tribunal should establish internal check

⁹ <https://ngtonline.nic.in>, dated from 04-07-2011 to 30 -05-2021

and balances mechanism for effective and transparent justice delivery system to last person in our country.

5. The Supreme Court of India Green Bench

In India, the Supreme Court has been most serious about the issues related to environmental pollution because of the non-revival nature of the environmental components.

With progress of environmental jurisprudence in India is grateful to the Supreme Court of India for the development, it has attained till time, for it is by the understanding of the Green Bench and the establishment of National Green Tribunal.

For attaining the preciseness at the grass roots level, it is essential to increase knowledge and information within the public in large about environmental laws, the Constitutional Rights and Duties through landmark judgments delivers by the Supreme Court of India, there are some cases deliver by our Apex Court show that our court much more serious about environment.

6. *Gulf Goans Hotels Co. Ltd. & Anr v. Union of India & Ors*¹⁰

The creations increased by the appellants are not in themselves illegal in the traditional sense. They are not lacking the consent and approval of the capable authority. It has been supposed by the State and permitted by the High Court that such structure is in rebelliousness of the environmental guidelines implement the devastation of the same as a stride to care for the environment of the beach in Goa. remarkably, it is a issue of the State that the construction in question are between 90 and 200 meters from the High Tide Line (HTL), although the detail that under the appropriate guidelines, which are part of the quality of the law, a distance of 500 meter. Manufacture within the HTL is banned, except for in uncommon situations where creation action is allowable between 200 and 500 meters from the HTL, issue to stern circumstances. Of course, all the manufactures, although finished on dissimilar periods and in special phase, before the passing of the

¹⁰ CIVIL APPEAL NO. 3434-3435 of 2001, Judgment on 22nd September, 2014

Coastal Regulation Zone (CRZ) in use of the power under the Environment Protection Act, 1986 (with effect from 19 February 1991) were finished.

In the current issue, the use of administrative power can be initiate in entry 13 and 14 of List 1 of the 7th Schedule to the Constitution of India. The power to present outcome to the guidelines and punish the violators thereof could not have been obtainable at the time while the guidelines came into force. However, with the endorsement of the Environment Protection Act, 1986 (hereinafter referred to as the ‘Act’) with result from November 19, 1986, Sections 3 and 5 authorized the Central Government to deliver compulsory orders and subject guidelines are penalizing. The impugned orders have been passed by the appellants in exercise of the said power under the Act read with the guidelines referred to above. Although the Coastal Regulation Zone (CRZ) notification under the Act was issue on February 19, 1991 and is admittedly tentative in nature, till the time they said notification comes into force, it is the rule that will administrate the area. Effect of instructions of law under Article 73 of the Constitution of India.

7. Green Bench:

With the state machinery not following its own laws, the judiciary imaginary a new technique of judiciary driven discharge of rules in India. The courts have also completed their part by freely interpret the different provision of the Constitution and other statutes towards guaranteeing social justice. The “Green Bench” of the Hon’ble Supreme Court of India underscored the broad spectrum of environmental considerations under the ‘Principle of Absolute Liability’ and ‘Sustainable Development’ as well as spot visits (where judges are first visited to see the situation) and experts. Developed new technologies like Committees. These modernizations can be divided under two categories: discharge of the instructions of the court and intrusion in the functioning of the administrative. The Apex Court is examining different development/non-development of plans taken up by NGOs and persons under PIL.

8. Some Important Orders passed by the NGT:

The National Green Tribunal passed different order in different issues related to Environmental Pollution because as we know it's specific body. I have mentioned some issues related orders, which is show work-culture of NGT.

8.1 Odd-Even Case¹¹

The Delhi High Court on Monday declined to obstruct with the Delhi organization experimentation to ban private non-commercial four wheelers on alternate days on Delhi's roads to reduce pollution. The National Green Tribunal (NGT) has confirmed that Delhi's air quality is at least 2.5 times more harmful than the "set limit", all evidence pointing to a combination of man-made factors that contribute to pollution levels, including trucks, two-wheelers contribute. Diesel combustion, industries and power plants on the periphery of the national capital, garbage burning and coal tandoors. The impact of the administration's odd-even policy on overall pollution levels can be uncertain and lead to a serious lack of final judgment or ascertainment of whether there may be more appropriate or better alternatives. But in this case at least, the legislature and the judiciary have been mostly aligned with the spirit. Judges have been the most sympathetic to environmental causes in recent years, leading to the development of a youthful environmental jurisprudence. Former Chief Justice of India (CJI) T.S. For example, Thakur, who after his appointment declared his support for the odd-even policy and even voluntarily joined his colleague Justice A.K. Deshpande being exempted from the ban. And when Prime Minister Narendra Modi announced the Swachh Bharat initiative, judges of several high courts symbolically picked up the broom. But the support of the judiciary is more than just personal.¹²

8.2 Yamuna River Case:¹³

The Yamuna Monitoring Committee appointed by the National Green Tribunal has asked the Central Pollution Control Board and the Delhi Pollution Control Committee to

¹¹<http://www.livemint.com/Politics/VSIRBRjzBT6ubb2SNtMSJN/OddevenandbeyondCourts carveout environmentaljurispr>

¹² *Ibid.*

¹³ The Hindu New Delhi Edition 5 April 2020.

ascertain the impact of the lockdown on Yamuna water quality and submit a report within a week. The guidelines come in the wake of several people sharing pictures of a full and clean Yamuna on social media, blaming the reduction in pollution levels in the river for the 21-day lockdown to contain the spread of the deadly COVID-19.¹⁴

9. Conclusion

Today, World community has big challenges in form of Environment Pollution. Hard works to fight the increasing environmental pollution are in the extreme sway at municipal and Global platform. It is universally recognized that for the economic development of the world, exploitation of natural resources and pollution of environment are inter-related, modern thinking is geared around drawing up for a line between these two phenomena, whereby the degree of exploitation of nature and natural resources as well the degree of economic development should be maintained at such rate which will assure sustenance of the Nature and environmental properties for the coming futures in a healthy atmosphere. This state of equilibrium is termed as “*Sustainable Development*”.

The environmental law incorporates human rights discussion. It co-relates to rights of living being who do have perform important role in environmental protection. In *Andhra Pradesh Central Board v. M.V. Nayudu*, Jagannath Rao J. positioned the human rights matters and environmental evils on the same platform. Justice Rao had told there is no doubt that Human Rights and Rights to Environment grunted under “Rights to life” under Article 21 of the Indian Constitution, while environmental aspect alarm life, human rights aspect distress ‘liberty’.

An analysis of the relevant cases decided by various courts and tribunals on environmental protection during the year under survey shows that several proactive directions have been given by them through vision to defending the fragile ecology and nature in India. The burden therefore appears to be on the Government’s concerned and regulatory authorities, as well as the citizens themselves, to ensure that at least within their limits there is pollution free environment, ecological protection and sustainable

¹⁴ *Ibid.*

development. The usual refrain that ‘we have number of laws and legal provisions but the real problem is about their implementation’ must be made a thing of the past or else all the stake holders will be culpable and unpardonable.

Numerous tribunal orders and the numerous awaiting orders have face indignation from dissimilar fronts, which have afforded to adulterate or invalidate the belongings of the judgments. whereas its strength be exaggeration to say that the hard work taken by the NGT have overpoweringly meet with achievement, the body’s 2021 stretch certainly indicate that the institutions is in cooperation practical and resolute concerning the issues it supports. In this month National Green Tribunal pronounced a judgment that if some people or agencies throw E-Waste near bank of Ganga or its attached river imposed 1 lakh fine by concerned pollution board. It is show that NGT is not think about traditional pollution but it is also about new environmental pollution objects.

At last, after realized all thing about my research paper there are lots of confusions and information are clear about NGT and on the basis of all these things, we can say that, it is not an organization of present it is see in future with more effective role.