



IMPRINTS OF ENVIRONMENTAL JURISPRUDENCE IN INDIA: NATIONAL GREEN TRIBUNAL V/S ENVIRONMENTAL POLLUTION

ETI GUPTA

RESEARCH SCHOLAR, DEPARTMENT OF LAW, UNIVERSITY OF RAJASTHAN.

ABSTRACT:

Environmental law has had a worldwide surge since the start of the 1990s. Since then, Environmental Jurisprudence has advanced significantly. In a series of decisions, the Supreme Court had advocated for the creation of environmental courts. The National Green Tribunal was established on October 18, 2010, in the year 2010. It was intended to be a specialized organization to handle issues that had a multidisciplinary nature. The tribunals currently function as systems that have improved upon their original flaws. This paper aims to analyse the creation of the National Green Tribunal as well as the legal developments and reforms it has spurred. This essay will examine the study of many tribunal orders as well as the constraints that have constrained the tribunal's goal. Presently, there are more than 1200 environmental courts devoted to resolving environmental issues. India has made progress in this direction, and good governance and enforcement are crucial for realizing the 2030 Agenda for Sustainable Development. The National Green Tribunal's main goal is to devote all of its resources to protecting the environment, using all of its authority to reduce negative environmental effects and offer remedies and compensation where necessary. The National Green Tribunal was established in order to help increase the enforcement of environmental law in India, where policy enforcement has historically lagged. It focuses on a succinct history of legislation that were developed in India to preserve the environment and pursue environmental justice. The article also provides a brief explanation of individual National Green Tribunal interventions that had a significant positive impact on the environment and society at large.

KEYWORDS:

INTRODUCTION:

India's legal system has long been overworked due to a massive backlog of cases. To lighten the caseload on the current courts, it became necessary to establish a distinct environmental court. The National Green Tribunal was established after a drawn-out process that took into account a number of different issues. The background of the Constitution has to be considered first. Since the 42nd Amendment Act's insertion, the Constitution has gradually changed from being devoid of environmental protection measures to including a number of environmental protections. The second aspect that needed to be taken into account was India's participation in international conferences and conventions. The Stockholm Declaration of 1972, which highlighted the need for adequate action to improve the environment on a worldwide scale, is sometimes referred to as the international "Magna Carta" of the environment. Following this, the Parliament enacted various pieces of legislation, including the addition of Article 48A to the Constitution. India was required to provide cures and solutions to those impacted by pollution and other environmental deterioration during the United Nations conference on environment and development. The Supreme Court in the Oleum Gas Leak case also highlighted the need for creating separate courts to handle environmental issues and disputes. In the Oleum Gas Leak Case, Justice P.N. Bhagwati ordered expert panels to assess the degree of environmental degradation. It was the

leading argument in favour of the requirement for "neutral scientific competence" to support well-informed decisions. These courts would have the technical knowledge and skills to properly handle environmental protection-related disputes. The National Environmental Tribunal Act, 1995 was passed by Parliament to address the need for specialised courts to handle environmental issues, but it was never put into effect. The National Appellate Authority Act, which was later passed, had its own drawbacks, including a limited scope of authority and significant gaps in the composition that weren't properly filled. Two further instances, Indian Council for Enviro-Legal Action v. Union of India and AP Pollution Control Board, added support to the notion of creating environmental courts. The court believed that because environmental scientists and other technical experts would be involved in the process, the environmental courts would benefit from their expertise. In the case involving the Indian Council for Enviro-Legal Action, the Supreme Court raised the idea of creating environmental courts.

The Court believed the establishment of environmental courts would be beneficial in light of the fact that criminal court cases involving the Water and Air Act never came to a resolution, either because of the workload or because the importance of environmental issues was not recognised. About 42 nations chose to establish specialised tribunals in 2009, according to estimates, in order to better enforce

national environmental laws . While reviewing environmental courts in New Zealand and drawing on the rules of the Court in New South Wales, Australia, the decision to establish a specialised environmental court in India was made. 2009 saw the introduction of the National Green Tribunal Bill into the Lok Sabha, where it was the subject of a lengthy discussion. It garnered a number of criticisms, the most of which centred on the bill's narrow emphasis and promotional character. As a result, Parliament passed the National Green Tribunal Act in line with Article 253 of the Constitution in an effort to be in compliance with and fulfil its duties towards the Stockholm Declaration, 1972, of which India was a member.

THE NATIONAL GREEN TRIBUNAL

The goal of the NGT's founding was to provide quick and effective resolution of disputes involving environmental preservation. One benefit of the National Green Tribunal is that there is a relatively straightforward process for starting a lawsuit for compensation for environmental harm or for appealing a government decision.

Additionally, the Tribunal is not required to operate in accordance with the rules established by the Code of Civil Procedure; instead, it is governed by the concepts of natural justice. The Indian Evidence Act, 1972's rules of evidence are also not relevant to the Tribunal. This makes it easier for environmental advocacy groups to contact the Tribunal and give the pertinent evidence, as well as for the parties to criticise the defects and any negative effects a project could have on the environment. As a result, the NGT has more freedom to carry out its duties and issue remedies to the party in question.

According to the law, the Tribunal must decide on an application within six months after the applicant's filing date. The Precautionary Principle and the Polluter Pays Principle are two internationally accepted standards that the Tribunal must abide by while deciding disputes. It is the first organisation of its kind whose parent legislation requires it to follow the polluter pays concept. One of the Act's most distinctive features is Section 20. It requires the Tribunal to use the sustainable development principle while making any decisions.

A significant corpus of environmental jurisprudence has been developed with the help of the judiciary. Despite this, one of the weakest areas is still seen to be policy enforcement. The National Green Tribunal's main goal is to devote itself exclusively to the cause of protecting the environment and to utilise all of the legal authority that has been granted to it to lessen environmental harm, give redress, and compensate those who have been harmed. The National Green Tribunal was established in order to assist in bolstering the enforcement of environmental legislation in India because the country's policy enforcement has historically been inadequate.

The NGT has been established as a statutory panel of independent experts from a wide range of subjects. By looking beyond the cost-profit viewpoint of a project, the

engagement of specialists from other fields advances the goals of environmental conservation and development. Any administrative activity that violates environmental legislation has been granted the authority to be prohibited and ruled invalid by the tribunal.

All civil disputes involving environmental issues and inquiries about the laws listed in Schedule 1 of the National Green Tribunal Act may be heard by the National Green Tribunal. The Act grants the Tribunal the authority to decide disputes in which an important environmental issue is challenged. Strict precautions have been put in place to prevent non-compliance with the tribunal's order or the law. This will guarantee that the Tribunal's order is carried out. One may describe the NGT as a quasi-judicial body. It differs from a typical court. By using a flexible approach to conflict resolution, specialised environment courts and tribunals are better able to provide creative solutions and complete remedies to environmental concerns.

IMPORTANT ORDERS ISSUED BY THE TRIBUNAL

Since the NGT's founding, the number of judgments it issues each year has increased. In 2015, a total of 821 orders were placed, as opposed to a total of 28 orders delivered in 2011. This is a sign of the growing environmental worries in a developing country like India. The NGT is renowned for making decisions quickly. It has issued directives to several authorities, such as those prohibiting noise pollution in Delhi, protecting wildlife in Assam, and conserving biodiversity in the Western Ghats.

For Delhi's residents, the decision to deregister diesel vehicles after 10 years was a success since it opened the door to the potential of significantly decreasing pollution. As part of its authority, the National Green Tribunal has suspended the fines against a number of projects. When a few nearby communities objected to the project in line with the Forest Rights Act of 2006, the NGT asked the Ministry of Environment to evaluate the approvals and reassess them in the POSCO case.

Both large firms and the government have received harsh criticism for not abiding by the pertinent environmental legislation. The Tribunal in *Adivasi Majdoor Kisan Ekta Sangathan v. Ministry of Environment and Forests* noted that the public hearing held in the case of approving the Jindal Steel and Power's Mining Project's environmental clearance was in flagrant violation of the principles of natural justice and was therefore declared invalid. 16 Any agency that implements an order issued by the NGT must be held accountable. To determine whether the Agency has followed the NGT's directions or not, the order should be carried out completely.

The National Green Tribunal has the authority to take *Suo moto* cognizance of environmental issues and has done so in the past. In the case of *NGT v. State of HP and Ors.*, the NGT noted that the state of Himachal Pradesh's ever-increasing motor traffic was contributing to the destruction of the natural environment. A programme for scientific forestation to preserve the ecosystem was

launched after directives from the tribunal. In addition, the Court ordered the government to charge car owners a fee, which would be deposited in the Green Tax Fund and used to undertake rehabilitation programmes.

Up to 2014, environmental impact evaluations were a factor in around 35% of cases that were presented before the Tribunal. Many of these claims were brought against the state on the grounds that environmental clearances had not been granted with the proper care. Any EIA report that included a possible project had to be made public and publicised in the neighbourhood media. Any public concerns must be noted and forwarded to the expert assessment panels. Even the Supreme Court began evaluating its own caseload when the National Green Tribunal was established. In an unexpected decision, the Supreme Court assigned all environmental matters to the Tribunal in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. V. Union of India* with the intention of expediting and effectively resolving these cases. The Court spelled out in very explicit terms that any matters brought after the NGT Act's implementation and falling under its key provisions would be transferred to the Tribunal and could only be brought there. The Supreme Court moved more than 300 cases to the Tribunal in the past year.

The Tribunal cancelled the environmental clearance given to Chennai's Municipal Solid Waste processing facility in *N. Chalamuthu v. District Collector* because the EIA reports contained inaccurate information. In a different case, *Hussain Saleh Mahmud Uman Bhai Kara v. Gujarat State Level EIA Authority and others*, the NGT revoked the clearance granted to Scania Steel and Power Ltd for failing to follow the rules of procedure, such as having the public hearing.

The NGT has approved various projects, demonstrating that it is not opposed to economic progress. The Tribunal overturned the decision of the relevant government to shut down the 250000-tonne facility of Sterlite Copper in the case of *Vedanta Ltd.* The Tribunal further instructed a subsidiary of Vedanta to spend Rs 100 crore on the welfare of local residents in order to guarantee that environmental protection measures are carried out. The court ordered the Tamil Nadu Pollution Control Board to approve the smelter's opening within the allotted time frame. The decision included other preventative requirements that the plant had to adhere to, including creating a website for the reporting and resolution of complaints from nearby stakeholders and updating the report on ground water quality on the corporate website.

THE NATIONAL GREEN TRIBUNAL'S LIMITATIONS

The National Green Tribunal serves as India's main regulatory body for environmental protection and preservation. According to the Finance Act of 2017, the government is free to select the requirements and circumstances for the nomination of the NGT board members. However, there have been several issues that have raised questions about the NGT's reliability. Due to

the fact that the government has the authority to nominate NGT board members, it is not required that they be judges of the Supreme Court or even of the High Court. This has led to concerns about the qualifications and trustworthiness of the chosen NGT board members.

Regarding the Tribunal, there is no provision for public interest litigation. The practice of PIL has been crucial in the advancement of Indian environmental law. This is one of the issues affecting the NGT's jurisdictional boundary that has to be addressed. The Bombay High Court asked the tribunal to clarify the meaning of "aggrieved person" in the case of *Cavelossim Villagers Forum v. Shree Balaji Concepts and Others*. It also asked the tribunal to consider whether it could accept an application that falls under the purview of public interest litigation.

It is necessary to resolve the question of whether the High Court may consider Tribunal appeals under Articles 226 and 227. This point has to be clarified since the Madras High Court ruled that the High Court has the authority to consider challenges against NGT rulings.

The deadline for submitting an application is one of the Tribunal's main restrictions. Within six months after the date the cause of action arose, applications must be submitted to the Tribunal. With a five-year application deadline, the rule regarding applications for grants of compensation or relief still allows for some leeway.

CONCLUSION

According to the NGT's own history, the new Tribunal's establishment was not an order placed on the judiciary. In actuality, the Supreme Court itself made the suggestion. This would imply that the current functioning judiciary would not forbid the reform and that the new judges would integrate with other authorities without engaging in any significant conflicts. With regard to the Tribunal, the Supreme Court exercises oversight to make sure that judges who support the environment do not contradict other judges or constitutionally mandated principles. It is true that the NGT does not address every environmental issue, but it will undoubtedly pave the path for the development of creative solutions to the environmental issues that affect both the country's citizens and environmental activists. The NGT has issued directives in a number of areas, including the management of trash and the conservation of biodiversity. It is uncertain if will uphold its mandate going forward. Instead of just imposing a price on environmental damage, rigorous enforcement methods are now required. For the environment to be effectively restored, the NGT must keep this in perspective.

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