

NATIONAL GREEN TRIBUNAL: A NEW MANDATE TOWARDS PROTECTION OF ENVIRONMENT

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After independence of India the main concern of economists were to ensure basic amenities for all. After industrial revolution it was realized that it is equally important to ensure the decent environment and to protect the resources from depletion. Thus, after the United Nations Stockholm conference on Sustainable Development in 1972, new provisions are introduced in the Indian Constitution by forty second amendment. New legislations were enacted for the protection of environment but there was vacuity of adjudicatory machinery. It was tried to constitute two tribunals for the said purpose but they were inefficient and ineffective. So, there was a constant demand for the constitution of a court which can be a blend of experts on the subject and professional judges. Thus, Law commission in its 186th report suggested for the creation of National Green Tribunal. On 18.10.2010 National Green Tribunal came into force. In the last six years National Green Tribunal has decided many cases which proves that it is a custodian of all resources, it decide matters considering concept of sustainable development, precautionary principle and polluter pays principle. It strives to maintain a balance between protection of environment on one side and development of nation on the other. It is a perennial source of directions and guidelines which are required to be taken in any issue for instance in solid waste management, e-waste disposal, use of sirens and horns on vehicle and many more.

Introduction

"The basic insight of ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system is weblike; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem"[1].

Over the years there is a brawl between technological advancement of a country at the cost of environment. After the independence of India, the main concern of the

economists was to strengthen the economy of the country and primarily to ensure safe drinking water and food for all. The initial decades were devoted to the development of agrarian societies only but later on it was felt that it is not possible to stand among strong economies of the world without devising the means for self-development. Import of technologies from developed countries was costing too much for a developing country and so, the thought shifted to the industrial and technological development of India. At that time for the sake of self-help and industrialization resources of the country were exploited without any thought of the future but globally the whisper about the concept of "sustainable development" was started and same drew the attention of India. Sustainable development simply means the thoughtful use of resources, considering the future generations without compromising the need of today. It was in 1970s that for the first time the United Nations Conference on the Human Environment held in Stockholm brought the industrialized and developing nations together to delineate the 'rights' of the human family to a healthy and productive environment. Thereafter, in 1992, 1997, 2002 and 2009 conferences were organized worldwide to streamline and analyze the concept of sustainable development and environment protection. Earlier only Article 21 was considered as protector of environment as judicial precedents proved that this right directly flows from right to life. However, it was in 1976 only when 42nd amendment was introduced in the Indian Constitution and protection of environment was made as a Directive principle for state policy under Article 48A[2] and a fundamental duty under Article 51A(g)[3]. Today protection of environment is fundamental duty of every citizen as well as Directive principle for the State. It cannot be denied that exploitation of resources is necessary for the development of the country but planned, systematized and only necessary exploitation is our main concern today. Since independence many legislative framework came into existence and shape like The Water (Prevention and Control of Pollution) Act, 1974, The Wild Life (Protection) Act, 1972, Forest (Conservation) Act, 1980, The Air (Prevention and Control of Pollution) Act, 1981, The Environment (Protection) Act 1986 and many more. All such enactments provide for protection of a particular resource of the country but they all lacks in execution of the guidelines mentioned there. So, there was a constant demand of strong execution machinery, in fact machinery which can adjudicate as well as execute such adjudication. Although under most of the

above-mentioned Acts there is a mention of Central pollution control board and State pollution control board but they were mere industry set up clearance gateways and not an adjudicatory authorities in true sense. They are basically established to check local conditions suitable for an industry and works with the appropriate government. There are many precedents where Supreme Court emphasized on the need of special courts for the environment issues. Environment is one such issue sensitized where matter cannot be adjudicated without the help of experts. In case of **M. C. Mehta v. Union of India**[4], the court observed that "Environment Court" must be established for expeditious disposal of environmental cases. Same point was reiterated in case of **A.P. Pollution Control Board v. M.V. Nayudu**[5] and **Indian Council for environment legal action v. Union of India**[6]. Responding to the Hon'ble Supreme Court, Indian parliament has passed two Acts namely National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997[7]. However, these two Acts proved as dead letter and a non-starter. These two tribunals were not efficient to handle sensitive matters of environment and economic development. Closure of these tribunals created a judicial vacuum as there was no forum for new cases, and the pending cases were left in limbo. At that time if a case pertaining to the subject of environment came up before the court then the court hesitated in imposing penalty on the polluter because of lack of knowledge on the subject and so no question can be raised about the imposition of the penalty pre-hand on basis of precautionary principle. Thus, in case of **Charanlal Sahu v. Union of India**[8] the court opined that "under the existing civil law damages are determined by the civil Courts, after a long drawn litigation, which destroys the very purpose of awarding damages so in order to meet the situation, to avoid delay and to ensure immediate relief to the victims, the law should provide for constitution of tribunal regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal." By that time it was well understood that environment courts would require not only professional judges but also experts on the concerned subject. So, the law commission has conducted a study of foreign environment courts especially of a Australia and New Zealand and prepared a report recommending that special courts on environment must be sufficient to

lessen the burden on Supreme court and High Court. They must have the power of civil court, and also have original and appellate jurisdiction. Along with this special courts must take the jurisdiction under the existing legislations so, that there cannot be overlapping of jurisdiction in any case. After a long deliberation in both houses finally an Act came into shape which was named as "National Green Tribunal Act, 2010" w.e.f 18.10.2010. This tribunal is quasi-judicial body and blend of powers of civil and criminal courts in many respects. Today, the principal bench is sitting in Delhi and other four benches are in Bhopal, Chennai, Kolkatta and Pune. Now, since the NGT is entrusted with the task of adjudication under the eight Acts mentioned in the I schedule which covers The Water (Prevention and Control of Pollution) Act, 1947; The Water (Prevention and Control of Pollution) Cess Act, 1947; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1991; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002. Further, Section 14 provides that it has jurisdiction over all civil cases pertaining to environment matters. In one of the interview[9] Justice Swatanter Kumar has stated that NGT must have suo moto powers in certain respect however same is not expressly provided under the Act but it is essential for its smooth functioning. In the past few years it has been noticed that the tribunal has exercised its suo moto powers. It is imperative to note that NGT has command over all resources of the country because in any of the environment matters it has undisputed jurisdiction.

NGT as custodian of natural resources:-

Natural resources are the assets of entire nation and NGT are the custodian of all natural resources. Government has taken many steps to protect flora and fauna of the country by protecting their natural habitat. And also it is the duty of every national under Article 51A (g) to protect the environment and to have compassion for living creature. In spite of this provision every time it is found that industries blatantly violated the rules and regulations. NGT has taken very stringent actions against the violator of laws. In case of **Shobha Phadanvis v. State of Maharashtra Another**[10], the question raised was about the conservation, preservation and protection of forests and the ecology where the forests were destroyed immensely and without prior permission of the authorities. Tribunal has directed the forest authorities

to continue the order of precautionary principle and to prepare a Disaster Management Plan (DMP) for protection of Forests. Tribunal observed that forests are a vital component to sustain the life support system on the earth. In case of **Court on its own motion v. State of Himachal Pradesh Ors[11]**, here the tribunal on its own motion took the cognizance of depleted forest area in state of Himachal Pradesh on account of increased and unregulated tourist and vehicular activities. Court was also engrossed towards solid waste management in the state. Court ensured that to ensure hygiene, cleanliness and natural beauty of the glacier, it is essential that no commercial activity of any kind is permitted at Rohtang Pass Glacier. It was further observed that high tourist activity, vehicular pollution and deforestation attributable to acts of emission require to be compensated, restored and maintained in a manner that there is minimum damage and degradation of the environment. Many directions were issued to the concerned authorities.

In case of **M/S Assam Stone Crusher v. Rohit Choudhury & Ors[12]**, industries were illegally established in "No Development Zone", in and around Kaziranga National Park. So, directions were sought for closure of such industries. Here the tribunal directed the central pollution control board to examine the conditions and to take final call on closure of industries. However, certain industries were directed to be closed which are in immediate vicinity of No Development Zone. In certain cases tribunal has decided matters by taking into considerations of employment of labors working there, financial condition of industry and need of local people. This view was taken because of the concept of sustainable development. For instance in case **M/S Leela Textile. Exports v. State of Rajasthan and ors.[13]**, where the State of Rajasthan had handed over a piece of land to the Rajasthan State Industrial Development and Investment Corporation Limited (for short the "RIICO") for the purpose of setting up an industrial area. Many industries were set up there without obtaining the permission of the state pollution control board and were discharging their effluents into the CETP without authorization. Tribunal aptly observed that "Keeping in view the principle of sustainable development, the peculiar facts and circumstances of the case and the time for which these industries have been in operation, we do not propose to direct their closure forthwith but would issue appropriate directions to enable them to operate while ensuring that there is no

pollution." In many cases tribunal has also applied the "*a reasonable person's test*", where life, public health and ecology have priority over unemployment and loss of revenue. Development and protection of environment are not enemies. Right to a clean and decent environment has been held to be a fundamental right, coupled with an obligation on the part of the State and the citizens. NGT has not hesitated in imposing huge penalty on big industry houses for example the tribunal has slapped a penalty of Rs. 25 crore on Adani-Hazira Port Pvt. Ltd (AHPPL) and its associate Hajira Infrastructure Pvt. Ltd for carrying out work at their Hazira-based port near Surat without acquiring environment clearance. Thus, toady it cannot be denied that NGT is a custodian of resources and development of the country.

Role of NGT in daily life:-

NGT has not only decided matters of major industries but also of daily concerns which are of much importance for a common man for instance in case of **Dileep B. Nevatia v. Union Of India & Ors[14]** the main question arose of violation of the Noise Pollution (Regulation & Control) Rules, 2000 made under the provisions of the Environment (Protection) Act, 1986 by vehicles using multi- tone horns and sirens. It was also noticed in this case that no standard is also specified with regard to use of horns and sirens in the ambulances and Police vehicles. In the said order the Ministry of Road Transport & Highways was directed to notify the standards for sirens and multi-tone horns used by different vehicles either under Government duty or otherwise. In **Pathankot Welfare Association v. State of Punjab[15]** where NGT dealt with model action plan for solid waste by pronouncing it as general law. In case of **Jeet Singh Kanwar v. Union of India[16]**, where petitioners challenged the grant of clearance certificate to an industry to establish coal fired power plant. Here the essential guidelines of EIA were flouted and had not been made available. Tribunal emphasized on precautionary principle and on that basis it was opined that clearance certificate should not be granted by MoEF and thus that order have to be quashed. In **Vardhaman Kaushik v. Union of India[17]**, the Court took cognizance of the growing pollution levels in Delhi. It directed a Committee to prepare an action plan and in the interim, directed that vehicles more than 15 years old not be allowed to ply or be parked on the roads. There was much hue and cry on the decision of NGT and it was appealed before the Hon'ble Supreme Court where in

November 2015 Chief Justice H L Dattu (as he then was) opined that *we are trying to do something good for people. Let us assist them and not discourage them. NGT was established with the aim of access of environmental justice to each and every person residing even in the remotest part of the country*[18].

NGT creates a new regime of environment litigation:-

MC Mehta, a great environmentalist pioneered in the area of environment concerns in India but the creation of NGT also herald a new area for any person interested in protection of environment. On the question of need of representation by an advocate, NGT held that any person can approach the Tribunal to agitate a grievance relating to the protection and improvement of the natural environment as long as it isn't a frivolous petition. Thus in case of **Samata v. Union of India**[19], court has relaxed the concept of locus standi where wide range of person can be included in term "aggrieved person". This decision is crucial as it opens up the arena for environmental litigation to a much wider group of stakeholders. Any person who has reason to believe that a decision will have an adverse impact on the natural environment can approach the Tribunal. Further, it also important to mention that NGT surpasses the jurisdiction of High Court and appeal lies to Supreme Court. Thus, perhaps it is the only court of such nature which gives opportunity to any aggrieved person to seek equity and protect environment without much of hurdles. Today NGT is handling every matter in expeditious and expertise manner and focusing on ex debito justitiae i.e. in interest of justice only be it the matter of protection of sundarbans, management of e-waste or imposition of penalty on Sarpanch for felling trees. After examining the six years of working of NGT it can be said that is a quasi-judicial body which is constantly working and endeavoring towards safe environment. In a short journey, NGT has proved that it is blend of epistemic qualities of an expert and professional knowledge of a judge which are essential for dealing in cases on environment. NGT has to deal with more serious issues in near future as world are setting new parameters to protect the environment and Paris agreement on climate change is one such example.

References

[1] Science Action Coalition by A. Fritsch, Environmental Ethics: Choices for Concerned Citizens 3-4 (1980). (1988) Vol.12 Harv.Env.L.Rev. at 313. As

mentioned in case of A.P. Pollution Control Board v. M.V. Nayudu, 1999(2)SCC 718

[2] Article 48A, "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country".

[3] Article 51A(g), "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."

[4] 1986 2 SCC 176

[5] 1999(2)SCC 718

[6] 1996(3)SCC 212

[7] In 186th Report of Law Commission it is opined that, "We may also state that the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It appears that since the year 2000, no Judicial Member has been appointed. So far as the National Environmental Tribunal Act, 1995 is concerned, the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by Parliament, the Tribunal under the Act is yet to be constituted. Thus, these two Tribunals are non-functional and remain only on paper.

[8] 1990 AIR 1480

[9] <http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400>

[10] Decided on 13.01.2014

[11] Decided on 06.02.2014

[12] Decided on 24.01.2013

[13] Decided on 01.05.2014

[14] Decided on 09.01.2013

[15] Decided on 25.11.2014

[16] Appeal No. 10 of 2011 (T) dated 16.04.2013

[17] Original Application No. 21 of 2014

[18] <http://www.financialexpress.com/article/economy/supreme-court-upholds-ngo-order-imposing-ban-on-10-year-old-vehicles-in-delhi/65202/>

[19] Decided on 13.12.2013

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4. Charanlal Sahu v. Union of India, 1990 AIR 1480
5. Shobha Phadavis v. State Of Maharashtra Another, Decided on 13.01.2014
6. Court on its own motion v. State of Himachal Pradesh Ors, Decided on 06.02.2014
7. M/S Assam Stone Crusher v. Rohit Choudhury & Ors, Decided on 24.01.2013
8. M/S Leela Textile. Exports v. State of Rajasthan and ors., Decided on 01.05.2014
9. Dileep B. Nevatia v. Union Of India & Ors, Decided on 09.01.2013
10. Pathankot Welfare Association v. State of Punjab, Decided on 25.11.2014
11. Jeet Singh Kanwar v. Union of India, Decided on 16.04.2013
12. Vardhaman Kaushik v. Union of India, Original Application No. 21 of 2014
13. Samata v. Union of India, Decided on 13.12.2013

Others

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2. 186th Report of Law Commission
3. <http://www.downtoearth.org.in/coverage/tribunal-on-trial-47400>
4. <http://www.financialexpress.com/article/economy/supreme-court-upholds-ngo-order-imposing-ban-on-10-year-old-vehicles-in-delhi/65202/>