

NATIONAL GREEN TRIBUNAL

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Abstract

Human beings have always been a meddling entity. For their convenience, they have brought changes in their natural habitat's which has resulted in harmful impacts on the environment and has also swiped off many of the living species from the earth. Environmental Law, as the name suggests, is a body of rules and regulations relating to the environment, which functions to achieve the objectives of environmental protection. It includes all the treaties, statutes, rules, guidelines, customs, etc. which governs the conduct of a human being in their day-to-day lives as well as ensures its protection.

In the present scenario, environmental law emerged as a set of laws with specific objectives, for example, prevention of nuisance, strict liability principle, etc. The development of the different subject specific laws in the field of the environmental law have led to its development and have not only given enlarged its scope but has also added to its quality.

One such enactment is the National Green Tribunal, 2010 which play a vital role in protection of Environment. In our Article we are focusing on National Green Tribunal, its establishment and features followed by dimensions of the Challenge, objective of NGT, Composition of NGT and we will also discuss about related laws, case study and important judgments passed by NGT and finally there will be conclusion of the article.

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Introduction

The Law Commission of India in its 186th Report recommended that the government needs to constitute special Environmental Courts, to deal with multidisciplinary issues relating to protection of environment, which would have members with judicial or legal experience assisted by members with technical knowledge. Since the advice of environmental experts is required in deciding cases related to the environment it would be feasible to include environmental experts in this specialized body. Setting up such a body would help in fast disposal of cases. Environmental Courts in various states or group of states would have original jurisdiction in all civil cases where a substantial question relating to environment is involved and Appellate jurisdiction under various other statutes.²

The Government of India introduced The National Green Tribunal Bill, 2009 in the Lok Sabha on 31st July 2009. The bill provides for the establishment of a Green Tribunal, which is a special court dealing with cases related to environmental protection and conservation of natural resources and forests. It would replace the existing National Environment Tribunal and the National Environment Appellate Authority. The tribunal, which would function under the Supreme Court, shall have jurisdiction over all civil cases relating to environment and have powers to order relief and compensation to victims of pollution and other environmental damage, including accidents occurring while handling hazardous substances.

The bill, however, had faced criticism from different quarters, owing to its loopholes and limitations. The hon. Minister for Environment and Forests 'Jairam Ramesh' accepted some key amendments to the proposed legislation that the parliamentarians and the Standing Committee. The bill was finally passed, in May 2010, and became The National Green Tribunal Act, 2010.

The National Green Tribunal has finally been launched on 19th October, 2010. Justice 'Lokeshwar Singh Panta' has been named the Chairperson of the Tribunal. There will also be 10 other members in the Tribunal, each either a judicial or environmental expert. It would now hear all the pending cases dealing with environmental issues and the genuine Public Interest

² www.lawteacher.net

Litigations, also the Tribunal would decide the high profile Posco and Vedanta cases. The tribunal would have benches all over the country. The minister however hopes to set up the main bench of the tribunal at Bhopal, the city that has witnessed one of our countries most horrific man-made environmental disasters. Anybody and everybody can approach the Tribunal to claim civil damages arising out of inadequate implementation of environment laws. By setting a Green Tribunal India becomes the third country that has specialized courts to deal with environment related cases following Australia and New-Zealand, which already have such specialized courts.

Before the Green Tribunal was set up, the normal courts were responsible for deciding on cases arising due to environmental issues. Due to this approximately 5000 cases, in various High Courts and District Courts, were awaiting judgement. Such cases would now be transferred to the Green Tribunal.

Establishment of NGT

As per Section 3 of National Green Tribunal Act 2010³, the Central Government shall, by notification, establish, with effect from such date⁴ as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Features

Each bench of National Green Tribunal has a specified geographical jurisdiction covering several States in a region.

The National Green Tribunal has been vested with wide jurisdiction, and it can hear matters in the form of original, appellate, review and miscellaneous petitions.

- ❖ Section 14 of the Act⁵ confers the Tribunal jurisdiction in respect of all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I of the Act⁶.

³ The Gazette of India dated: 02.06.2010

⁴ 18.10.2010

⁵ National Green Tribunal Act 2010

- ❖ Tribunal is not bound to follow the procedure laid down in the Civil Procedure Code, 1908, but shall be guided by the principles of natural justice.
- ❖ The Tribunal is also free to devise its own procedures and is, therefore, not bound to comply with the rules of evidence as contemplated under the Indian Evidence Act, 1872.
- ❖ The Tribunal has a power of a civil court in respect of summoning, enforcing attendance, receiving evidence on affidavits, examining on oath, and granting ex parte and interim orders and injunctions.
- ❖ Tribunal is empowered by the Act to provide, by way of an order, relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I of the Act, including accident occurring while handling any hazardous substance.
- ❖ National Green Tribunal is called upon to follow the internationally recognized and nationally applied principles of sustainable development, the precautionary principle and the polluter-pays principle when passing nay order, decision or award.

Dimensions of the Challenge

- Pressure of Environment: Due to economic development, infrastructure growth, urbanization & changing life styles.
- Promoting intersectorality and integrating safety, health and environmental concerns.
- Balancing environment & development
- Strengthening implementation & compliance mechanism.

⁶ Wild Life (Protection) Act, 1972 is out of its ambit

- Institutional reform in adjudicatory system to keep pace with the implementation of the environmental legislations.

Objective of NGT

There are 3 major objectives of the Green Tribunal:

- ❖ The effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- ❖ It aims at enforcing all the legal rights relating to the environment.
- ❖ It also accounts for providing compensation and relief to effected people for damage of property.

Composition of NGT

- The Tribunal shall consist of-
 - ✚ A full time Chairperson;
 - ✚ Not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify;
 - ✚ Not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.
- The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialized knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

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- The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.
- The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating the practices and procedure of the Tribunal including-
 - ✚ The rules as to the persons who shall be entitled to appear before the Tribunal;
 - ✚ The rules as to the procedure for hearing applications and appeals and other matters [including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction], pertaining to the applications and appeals;
 - ✚ The minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:

Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal;
 - ✚ Rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.

Other Related Laws

- ✧ Civil Procedure Code (C.P.C) - remedying public wrong by Civil Courts, applying the principle of strict liability.
- ✧ Criminal Procedure Code (Cr.P.C)- injunction against Public Nuisance by Executive Magistrates.

- * Criminal prosecutions before Judicial Magistrate under various laws.
- * Appellate Authority's provision in some statues to hear appeals against the order of the State Pollution Boards (SPCB).

Case Study

1. Sunil Kumar Chugh v. Secretary, Ministry of Environment and forests, New Delhi⁷

The case was heard by the principal bench of NGT at New Delhi, comprising Justice Swatander Kumar and Justice U D Salvi, along with expert members D K Agrawal and M A Yusuf. In its judgment, the bench held that the developer had violated the EIA⁸ Notification, 2006 and the EPA⁹ by commencing construction without prior EC¹⁰. Further, by not providing adequate recreation grounds, the developer had severely prejudiced the right to life of the appellants. Consequently, the bench held the developer liable for violating the law and imposed a fine of Rs. 3 crore to be paid into the environmental relief fund maintained under the PLI¹¹ Act, 1991. Further, taking note of the fact that the developer had provided deficient recreation grounds to the residents, the court directed that a further sum of Rs. 32, 63, 600 be paid to the MPCB¹² for the deficient recreational area in the building. The approved plan of the building was quashed and the builder was directed to submit a fresh plan that would contain adequate parking for all residents of the building and address the shortfalls.

Important Judgments

⁷ Appeal No. 66 of 2014

⁸ Environmental Impact Assessment Authority

⁹ Environment Protection Act, 1986

¹⁰ Environmental Clearance

¹¹ Public

¹² Maharashtra Pollution Control Board

- a) Tribunal ordered that every household in Delhi will have to pay a monthly environmental compensation to clean up Yamuna River. According to the direction, the compensation to be paid will be directly proportional to the property or water tax whichever is higher, paid by a particular household. In case of unauthorized colonies households that do not pay property tax or water bill will have to pay an amount that would be between 100 rupees to 500 rupees.
- b) Tribunal banned mining or removal of sand from river beds across the country without license and Environmental Clearance from the Union Ministry of Environment and Forests.
- c) Tribunal issued a ban on the process of burning of tyres at public places like roads and areas surrounded by residential buildings. The order was passes following the actions of burning tyres during the religious and political possessions by groups as it cause health hazard. Burning tyres creates toxic smoke, which is also a serious environmental threat.
- d) Tribunal ordered a complete ban on burning of any kind to garbage, leaves, plastic waste and rubber in the open in NCR¹³ to control air pollution. As per NGT, burning of garbage and other material like plastic is responsible for nearly 30% of the air pollution in the capital and its suburbs. The person who is found burning or responsible for burning would be liable to pay compensation in terms of Section 15 of the National Green Tribunal Act, 2010. It also directed authorities to levy a fine of 5000 rupees on anyone found burning such material in the open.

Conclusion

Since the expansion of Industries and the beginning of ‘developmental’ activities in the country a large number of environmental issues have also come up. There are a number of instances where such human activities have caused immense damage to the environment.

¹³ Delhi-National Capital Region (NCR)

India is one of the very few nations in the world who gave immense amount of importance to environmental conservation. There are already a number of legislations that deal with environment and forest conservation and protection but the number of cases are more than which they can handle. As a consequence, to have speedy decisions relating to environment. A new Act¹⁴ was passed in the year 2010 under which a Tribunal was setup which is known as National Green Tribunal.

Although the Act faced a lot of criticism, yet its basic framework appears reassuring and it is hard to say that it is not the step in the right direction. It would bring about the much needed reform in the way the courts deal with environmental issues and also the way people perceive environmental damage.

¹⁴ National Green Tribunal Act, 2010