



National Green Tribunal: A Road to Environmental Justice

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Abstract:

This paper presents the brief evolution of National Green Tribunal. It highlights the landmark judgements of Supreme Court interpretation of Right to Environment within the ambit of Article 21 of the Constitution, which led to the establishment of National Green Tribunal. It focuses on the brief history of laws originated in India for the protection of environment and for seeking environmental justice. The paper also briefly explains specific interventions by the National Green Tribunal which resulted in large benefit to the environment and society at large.

Keywords: Article 21, Environmental justice, National green tribunal

1. Introduction

India has become the third country in the world to establish the green courts system for environmental justice following Australia and New Zealand. Although, the concept of environmental protection is not new in India, it has its root deeper in history when Bishnois of Rajasthan sacrificed their lives to save trees in 1730 and the famous Chipko movement that began in 1973 in Kumanu and Garhwal region of Uttarakhand State. However, today environmental justice has become the need of the hour when people are dying because of the pollution levels that has already hit the alarming limits. The large number of Tribal people are being displaced, under the garb of development and deprived of their shelter and livelihood on which they are dependent, without making proper arrangement of alternative source of livelihood and place to their shelter. They are deprived from natural resources for any development project, no doubt that development is an essential part of civilised society, but we must maintain a balance between environmental justice and sustainable development. The Green Court has proved to maintain the balance with environment protection viz-a viz a sustainable development.

Environmental rights were not present in the original version of Constitution of India. Therefore, environmental jurisprudence was not known appellation for Indian judiciary. It is the 42nd constitutional amendment in 1976 which changed the landscape by introducing Article 48-A and Article 51A(g) in Constitution of India.

2. Green Judgements of Supreme Court

The Supreme Court of India in its landmark judgements has called the need for “Green courts” many times for the expeditious disposal of environment related cases. The Supreme Court has elevated the ‘right to healthy environment’ to the status of a fundamental right under Article 21 of the Constitution in the process of progressive enrichment of the environmental jurisprudence with principles like sustainable development, polluter pays, public trust doctrine, precautionary principle and intergenerational equity for the first time in Subhash Kr. vs. State of Bihar¹ in 1991. The Supreme Court held that right to life is a fundamental right under Article 21 of the Constitution and include the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or

impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life. A call has been made for the constitution of green Tribunal by the Supreme Court for the immediate relief to the victims of industrial disasters. In Charanlalsahu vs. Union of India² and in M. C. Mehta vs. Union of India³ (the Oleum Gas Leak case), the Supreme Court established the concept of absolute liability – “stricter than strict liability” – for disasters aroused from the storage of or usage of hazardous materials from their factories. Further in Vellore Citizens Welfare Forum vs. Union of India⁴, the Supreme Court employed the “precautionary principle” and “polluter pay principle” as a part of the law of the country. Although Industries are vital for the country’s development, but having regard to pollution caused by them, principle of ‘Sustainable Development’ has to be adopted as the balancing concept. In Indian Council of Enviro-Legal Action vs. Union of India⁵, (the Bichhri pollution case), followed the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to pay compensation for the harm caused by them to the villagers in the affected areas, especially to the soil and to the underground water.

Articulating the doctrine of ‘Public Trust’ in M. C. Mehta vs. Kamal Nath⁶, the Supreme Court held that “Resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust”.

3. National Green Tribunal

There are many more cases relating to environmental justice which led to the formation of National Environment Tribunal Act, 1995 and National Environment Appellate Act, 1997 by the Indian Parliament but unfortunately both proved to be non-runner. The wide elucidations of Article 21 by the Supreme Court had become the warp and woof for environmental jurisprudence which not only protected the livelihoods based on environment but also added a large number of laws relating to environment and led to the foundation of National Green Tribunal.

National Green Tribunal was established on October 18, 2010 by enacting under the National Green Tribunal Act 2010, by the Central Government under the obligation of Stockholm declaration, 1972 and Rio declaration, 1992 in which India participated and also in 186th report of law commission, a strong recommendation was made as an effective step to protect the human environment and to provide an affective judicial and administrative proceeding and establishing environment laws regarding liability and compensation for the victims of pollution, environment degradation and developmental project affected people.

Till now from the formation and establishment of NGT, it has adjudicated more than 5000 cases and on a more affirmative side, it has successfully managed to dispose off most of the cases in six months that was postulated at the commencement. It works on the Principle of Natural Justice, sustainable development; public trust doctrine, intergenerational equity, precautionary principle and polluter pay principle. The National Green Tribunal has power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NATIONAL GREEN TRIBUNAL Act including The Water (Prevention and Control of Pollution) Act, 1974; 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. But doesn’t include Wildlife (Protection) Act, 1972, The Indian Forest Act, 1927 and Laws enacted by States relating to Forests, Tree Preservation etc.

Several path-breaking orders were passed by the NGT, in POSCO case NGT had took a bold step in setting aside the permission given by MoEF to POSCO project to go ahead with certain conditions. The Tribunal observed that “a close scrutiny of the entire scheme reveals that a project of this magnitude particularly in partnership with a foreign country has been dealt with causality without

there being any comprehensive scientific data regarding the possible environment impacts. No meticulous scientific study was made on each and every aspect of the matter leaving lingering and threatening environmental and ecological doubts un-answered”.

The Tribunal did take a step forward towards the protection of environmental protection when there was an event organised by Art of living. In this case the Tribunal held that “For the damage caused to the environment, ecology, biodiversity and aquatic life of the river, the Foundation should be held liable for its restoration in all respects”. And slammed a 5 crore rupees fine on Art of Living.

The menace of human waste being splattered on houses from airplanes while landing, also led the tribunal to slap a fine of 50,000 rupees on aircraft which empty toilet tanks in air. The order imposing 100 crore rupees damage on a Panama-based shipping firm and two of its Qatar-based sister concerns for causing an oil spill in South Mumbai coast on August 4, 2011, was noteworthy. While asking the three companies to pay environmental compensation to the Ministry of Shipping, the NGT also ordered Gujarat-based Adani Enterprises Ltd to pay 5 crore rupees as environmental compensation for dumping in the seabed 60,054 MT coal, being carried by ship M V RAK, and polluting the marine environment. The panel drew government’s attention to approve and implement action plans to tackle “environment Emergency” in Delhi and neighbouring areas and ordering deregistration of 10-year-old diesel vehicles.

It has also streaked the Government from spending on cleaning of Ganga after it failed to provide report. Cleaning of Ganga took the centre stage as the infuriated Tribunal stopped the Government from spending “a single penny” for Ganga rejuvenation work between Haridwar and Unnao when the authorities failed to inform it about exact quantum and quality of waste generated in the river.

The green panel announced a fine of 10,000 rupees on those found throwing waste in public places while noting that municipal solid waste (MSW) was one of the most serious pollutants in the country, especially in Delhi. Beverages major Coca Cola too came under the lens of the Apex environment body which appointed a Local Commissioner to inspect the premises of its Hapur plant in Uttar Pradesh and probe whether it was discharging effluents into a nearby pond.

4. Summary

As a judicial body in charge of supervisory jurisdiction over all environmental matters, NGT, has in many cries, prodded the pollution control authorities and catalyst action from Pollution Control Board. It has been setting the rules of the game and putting the weight of legal compensation and enforcement behind its ruling.

NGT is, in every manner, taking bold and good preventive step for the environment protection and guarding the environmental rights of citizen of India. It has passed a series of orders affecting every part of the country, continued to hog limelight on a variety of environmental issues as it cracked whip on those found guilty of damaging the environment.

- * 1- (1991) 1 SCC 598
- * 2- 1990 AIR SC 1480
- * 3- 1987 AIR SC 1086
- * 4- 1996 AIR SC 2715
- * 5- 1996 AIR SC 1446
- * 6- (1997) 1 SCC 388

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