

GREEN TRIBUNAL & ENVIRONMENTAL PROTECTION - A CRITICAL STUDY WITH REFERENCE TO CHENNAI/ SOUTHERN REGION GREEN TRIBUNAL

Balamurugan.P

Abstract :

The judicial system in India has been overburdened with a huge backlog of cases for a long time. The need arose for the establishment of a separate environmental court to reduce the burden of case load on the existing judiciary

Index Terms :

Green Tribunal , Environmental , Magna Carta, Oleum Gas Leak case, AP Pollution Control Board etc.,

Introduction

The judicial system in India has been overburdened with a huge backlog of cases for a long time. The need arose for the establishment of a separate environmental court to reduce the burden of case load on the existing judiciary. The creation of the National Green Tribunal came into being after following an extensive procedure and was determined on the basis of various factors. The first factor to be taken into account was the Constitutional background. There had been a steady development in the Constitution from having lack of provisions for environment protection to containing a number of provisions concerning the environment with the insertion of the 42nd Amendment Act. The second factor to be considered was the international conferences and conventions that India was a party to. The Stockholm Declaration 1972 which focused on the global necessity for appropriate measures for betterment of the environment has been usually defined as the International „Magna Carta“ of the environment. After this, the Article 48A was included in the Constitution and several

legislative enactments were passed by Parliament. During the United Nations conference on Environment and Development, India obliged to deliver remedies and solutions to the persons affected by pollutants and other environmental degradation.

The necessity for constituting special courts to deal with environmental concerns and cases was also brought to light by the apex court in the Oleum Gas Leak case.¹ Justice P.N Bhagwati in the Oleum Gas Leak Case appointed expert committees for analysing the extent to which the environment had been degraded. It was the foremost case which advocated the need for a „neutral scientific expertise“ for supplementing informed judgments. These courts which were suggested would have the technical know-how and expertise to decide matters of environment protection in a proper manner. Even though Parliament enacted the National Environmental Tribunal Act, 1995 to address the need for special courts to deal with environmental matters, the act was never implemented. The subsequent enactment of the National Appellate Authority Act, 1997 had its own limitations such as the restricted mandate and important vacancies in the composition which were not duly filled. The idea to constitute environmental courts was supplemented by two subsequent cases, namely the Indian Council for Enviro-Legal Action v Union of India and AP Pollution Control Board case. The court opined that the environmental courts would gain an advantage from the advice of environmental scientists and person with technical know-how as they would be part of the process. To reduce the burden of the case load in the Indian Judiciary, the need arose for a separate body which could deal with matters related to the environment. In the Indian Council for Enviro-Legal Action case, the Supreme Court brought to the forefront, the suggestion of setting up of environment courts.² The Court opined that in view of proceedings in criminal courts with respect to the Water and Air Act never reaching their

¹ Rishu Mala, Role of NGT in Environment Protection, available at <https://www.slideshare.net/RishuMala/role-of-ngt-in-environment-protection>

² 1996 AIR 1446

conclusion, either due to the workload or due to non-appreciation of the significance of environment matters, the setting up of environmental courts would be useful. In the year 2009, It was approximated that almost 42 countries had decided to constitute specialist tribunals to better enforce their environmental laws.³ The decision to establish a specialized environmental court in India was taken while considering environmental courts in New Zealand as well as by taking from provisions of the Court in New South Wales, Australia. The National Green Tribunal Bill was introduced in the year of 2009 in the Lok Sabha where extensive debate took place on the bill. It received various critiques, which were focused mainly on the promotional nature of the bill and its limited scope. An example of this is the report on behalf of the Access Initiative India which pointed out the limited area of jurisdiction and the limitations on the matters which could be adjudicated upon. There were major changes made during the course of these debates in Parliament. These changes included widening the scope of the powers of the tribunal with respect to matters which could be litigated before it and guaranteeing appeal to the apex court against its orders. Consequent to this, Parliament, in its endeavour to be in harmony with, and fulfil its obligations towards the Stockholm Declaration, 1972 of which India was a part, enacted the National Green Tribunal Act, in accordance with Article 253 of the Constitution.⁴

The National Green Tribunal

The establishment of NGT was with the objective of providing expeditious and efficient disposal of cases relating to environment conservation. One of the advantages of the National Green Tribunal is that there is a very simple procedure for instituting a case for compensation for harm done to the environment or for filing an appeal against a decision of

³ Gitanjali Nain Gill, A Green Tribunal for India, available at https://www.jstor.org/stable/44248749?seq=1#page_scan_tab_contents

⁴ P. Leelakrishnan, Environmental Case Book, Lexis Nexis

the government.⁵ The Tribunal also does not have to function in accordance with the procedure laid down under the Code of Civil Procedure but is guided by the principles of natural justice. Neither are the rules of evidence as laid down in the Indian Evidence Act, 1972 applicable to the Tribunal. This makes it simpler for conservation groups to approach and present the relevant facts in front of the Tribunal as well as making it easier for the parties to point out the flaws and any harmful impact a project can have on the environment. This also provides flexibility to the NGT in exercising its functions for the grant of remedies to the concerned person. A person does not even need legal counsel to represent himself in a case before the NGT as he can present the matter himself if acquainted with the facts of the case and if he is adequately informed about the law and procedures. Every decision of the tribunal is binding on all the parties, except in circumstances where the Supreme Court is approached and the order is stayed or reversed.⁶

With the principal bench being in Delhi, the tribunal has constituted four regional benches as well which include benches in the cities of Kolkata and Pune amongst others. The highlight of these benches is that they can be termed as co-equal benches.⁷ This means that the principle bench is not superior to these benches in the judicial hierarchy. The tribunal is vested with original jurisdiction along with appellate jurisdiction with respect to implementation of seven environment enactments.⁸

As per legislation, the Tribunal is required to dispose of an application within a period of six months from the date of filing of the same. The Tribunal while adjudicating disputes is to follow globally recognized principles which include the Precautionary Principle and the Polluter Pays Principle. It is the first agency of its type where the parent statute imposes upon

⁵ Praveen Bhargav, Everything you need to know about the National Green Tribunal (NGT), available at www.conservationindia.org/resources/ngt

⁶ Shibani Ghosh, Understanding the National Green Tribunal, available at: www.cprindia.org/news/5400

⁷ Ibid

⁸ The National Green Tribunal Act, 2010.

it the obligation to apply the polluter pays principle. Section 20 is amongst the most unique characteristics of the Act. It mandates the Tribunal for the application of the principle of sustainable development while passing any decision.⁹

The Judiciary has played a pivotal role in developing a large body of environmental jurisprudence. That being a fact, policy enforcement has still been seen to be one of the weaker areas.¹⁰ The primary purpose of the National Green Tribunal is to be dedicated solely to the cause of environment conservation and apply all the powers vested in it to minimize the adverse impact to the environment and provide remedy and compensation for the same.¹¹ As the policy enforcement has been weak in the country, the setting up of the National Green Tribunal was with a view to aid in strengthening the enforcement of environmental law in India.¹² It is not only India which has taken a step towards providing special courts which deal exclusively with environment protection matters.

The NGT has been constituted as an independent statutory panel consisting of experts from a plethora of fields. The involvement of experts from a variety of field is to further the interests of the environment protection and development by looking beyond the cost-profit perspective of a project. The tribunal has been given powers to prohibit and declare illegitimate any action which is administrative in nature and is in contravention of environment legislative enactments. The NGT has come a long since its constitution by displaying a proactive attitude towards the protection of the environment.

The National Green Tribunal has jurisdiction to entertain all civil cases relating to environmental matters and question concerning the legislations provided in Schedule 1 of the

⁹ Section 21 of the NGT Act

¹⁰ National Green Tribunal, Its Functioning and Effectiveness Vis-a-vi National Green Tribunal Act, 2010, available at: shodhganga.inflibnet.ac.in/bitstream/10603/97864/13/13_chapter%207.pdf

¹¹ N. Maheswaraswamy, Law relating to Environmental Pollution and Protection.pg 121.

¹² OSunil Kumar Agarwal, Establishment of National Green Tribunal in India : End of Road for Public Interest Litiagation, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1878446

National Green Tribunal Act. The Act gives the Tribunal the power to adjudicate disputes where a substantial question related to environment is raised. There are strict safeguards which have been put in place for non-compliance or the order of the tribunal. This will ensure the implementation of the order passed by the Tribunal. The NGT can be termed to be a Quasi- Judicial body. It is unlike a normal court. This implies that unlike courts having the power to adjudicate all types of disputes, the tribunal has the power of enforcing legislation upon administrative agencies.

Specialized environment courts and tribunals are better equipped to come up with innovative resolutions and comprehensive remedies to problems concerning the environment by adopting a flexible approach in resolving disputes. Academic experts such as Warnock refer to the NGT as one of the most progressive Tribunals around the world and describe the remedies and solutions as given by the Tribunal as notable. Judge Rajan Gogoi of the Apex Court has also observed that the Tribunal, being one of the foremost environmental courts around the world, has a comprehensive jurisdiction.¹³ The appointment of technical experts was essential to the proper functioning of the Tribunal as it came to be one of the most significant elements of the Tribunal's normative structure.

Review of Literature

White, M.A. (1995) in his study provided an outline of concerns facing development of an environmentally responsible perspective. He reviewed major ways in which organizations respond to environmental threats and opportunities in the three major branches

¹³ Gitanjali Nain Gill, Mapping the Power Struggle of the National Green Tribunal of India: The Rise and Fall?, available at:
https://www.cambridge.org/core/services/aopcambridgecore/content/view/CB60E6258D273938062a5898BD997B7/S2052901518000281.a.pdf/mapping_the_power_struggle_of_the_national_gree_tribunal_of_india_the_rise_and_fall.pdf

of finance. corporate finance, investments and financial institutions, highlighting e specially novel programs and initiatives.

Sankar, U. (1998) in his study highlighted that greater reliance should be placed on the use of economic instruments for environmental protection. The reason for this was that if the instruments were well designed, they can signal the users of environmental resources about the social scarcity values of these resources.

Tripathi, Dr. S.C. "Environmental Law": In cases of M.C. Mehta v. Union of India, (1996) 4 SCC 351; M.C. Mehta v. Union of India, (1992) 3 SCC 256, the Supreme Court in these case stated that affect the life of citizen, it significant modification to the Constitution, or drawing-up of schemes and bye-laws of municipal bodies, and any other Act is amenable by the judicial review.

Statement of Aim and Objective of the Study

The aim of this study is to analyse and understand the existing laws and policies which govern the regulation of Protection of Environment. The main objective of this study are as follows:

- To analyse the legal aspects of Protection of Environment.
- To study and analyse the various Environment Policy documents, legislations concerning Protection of Environment of the Union and various States
- To study and analyse the laws and policies of Tamil Nadu with respect to Protection of Environment.
- To critically study the various judgements of Hon'ble Supreme court and High courts and Green Tribunals, this resulted in framing of laws to govern Environment Protection.

- To critically analyse the various agencies and institutions involved in implementing the laws on Protection of Environment.
- To critically analyse the existing legal framework from an angle of Social equity and viewing Protection of Environment as a Public Trust.
- To critically analyse the various judgements of Green Tribunal special focus on Sothern Green Tribunal.
- To critically analyse the role of the Green Tribunal in Protection of Environment.

Methodology and Techniques

The research work is predominantly doctrinal in nature. Hence, to suit the nature of research, various research methods such as Historical method, Analytical method, Evaluative method and Comparative method are also employed. Historical method is employed to trace out the origin, development and evolution of laws governing Protection of Environment. Analytical method is used to analyse and test the Environment laws in the present scenario. The Court decisions are critically analysed to evaluate the contribution of judiciary towards evolution of new legal framework for Protection of Environment. The research has adopted comparative method to relate laws of various jurisdictions and geographical settings. The research has extensively analysed the books, articles and newspaper reports related to environment and its regulatory framework from various sources.

Conclusion

There has been dire need in protecting the environment and there has been increase in burden of cases as regards environmental concerns on the courts which led to the establishment of the National Green Tribunal in 2010 under the National Green Tribunal Act 2010 also known as India's first Green court which was established specifically to deal with matters related to

environment. The role of NGT in disposing cases regards environmental cases increased in light of it giving various important judgments. But has it been efficient enough to tackle upcoming challenges is the question. For example, India doesn't have a separate legislation for climate change which is an upcoming global concern it only deals with the Acts which were incorporated during its incorporation and which are reflected in its mandate.

Arrangement of the Materials

Chapter – 1 In this research, the first chapter deals with introductory review and analysis of the International Laws on Protection of Environment, National Legislation and the State Legislation to conserve and prevent pollution of Environment. It also contains research problem, aim and objectives of the study, Hypothesis and research questions, arrangement of sections.

Chapter – 2 reviews the Constitution of India provisions related to environmental Protection.

Chapter – 3 discusses upon the legal status of environment protection in India. Apart from this, it also discusses about the status of right to free environment and right to environment as Human Right and as explained in the various Legislative Acts and Judicial pronouncements. It explains the *Doctrine of Public Trusts* the basis of preservation and conservation of environment by the State.

Chapter – 4 studies the role of Green Tribunal in protection of environment especially southern tribunal.

In Chapter 5 concludes the work with suggestions and recommendations. Also, possible amendments to the existing laws are proposed, which may take into account various social, legal and scientific parameters.

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