

NATIONAL GREEN TRIBUNAL: A JUDICIAL OR ADMINISTRATIVE BODY?

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INTRODUCTION

“*Delhi has become a gas chamber*”, tweeted by Hon’ble Chief Minister Arvind Kejriwal after India’s capital Delhi was covered by a dense layer of smog on the onset of November. This is one of the several environmental hazards that India has been facing since its independence. India ranks 141st in the list of Environmental Performance Index out of 180 countries prepared by Yale University.¹ It is quite alarming for a country having a population of more than a billion people. It is directly affecting the health and life of individuals living in the country. It is not a result of the recent trend of pollution or ignoring the principle of sustainable development. Since Independence, our policy makers were highly inclined towards uplifting India from the ruins of Britishers by way of industrialization and creating more employment opportunities, disrespecting environmental concerns - the very essence of a healthy and virtuous life. However, to our fortunate, the Government have enacted some major laws for regulating environment. During the same period, the Judiciary have realized the importance of a healthy environment and have shown its concern towards environmental upgradation through various pronouncements.

HISTORY

In 1972, India became a party to United Nation Conference on the Human Environment held at Stockholm wherein all the State parties were to take suitable steps towards safety and enhancement of human environment. Coining of the word “Specialized Courts” or “Environmental Courts” took place after the Bhopal Gas Tragedy Case.² The matter further escalated and the apex Court emphasized the need for development of Green Courts in 1986 Oleum Gas Leak Case.³ The Court was of the opinion that the Judges lacked specialized knowledge, technical skill and expertise in matters of environmental issues. It opined that

¹ *India*, Environmental Performance Index, available at <http://epi.yale.edu/country/india> last seen on 03/12/2017.

² *Union Carbide Corporation v. Union of India Etc.*, (1989) 2 SCC 540.

³ *M.C. Mehta and Another v. Union of India and Others*, (1987) 1 SCC 395.

speedy disposal of cases and continuous monitoring of governmental and other agencies in their environmental law compliances was posing difficulties. It strongly recommended establishment of Environmental Courts to deal with issues arising out of environmental matters which shall possess specialized skill and technical expertise. Furthermore, in *Charan Lal Sahu Etc. Etc. v. Union of India and Others*,⁴ the Supreme Court held that right to life guaranteed under Section 21 of the Constitution of India includes right to healthy environment.

Moreover, India's participation in United Nations Conference on Environment and Development held at *Rio de Janeiro* in June 1992 imposed a duty over all participating States to provide a mechanism for effective access, redressal and remedy through judicial and administrative proceedings. It also called all the participating States to advance national laws and provisions for liability of defaulters and reparation to the sufferers of environmental damage. Complying with the International mandate and recommendations made by Judiciary, the Parliament passed National Environmental Tribunal Act, 1995. However, failure to implement the 1995 Act led to passing of National Environment Appellate Authority Act, 1997. Under the said Act, a National Environment Appellate Authority was setup.

The functioning of the NEAA was questioned on various occasions due to its limited mandate and other peculiar bureaucracy. The 186th Law Commission Report in 2003 again accentuated on establishment of environmental courts in India. The report also criticized the Tribunal setup under the 1997 Act. It said that the Tribunal assigned with the task of Environment Impact Assessment had very little work to do. Moreover, since 2000, tribunal has no judicial member and that the Tribunals are non-functional and only on papers.⁵

Upon detailed report laid down before the house, Parliament came up with a new set of Bill which was effectively passed and implemented as National Green Tribunal Act, 2010. The main objective of the Act is ***“to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith and incidental thereto. The National Green Tribunal was established as per the provisions of this Act.”*** Therefore, the National Green

⁴ (1989) 2 SCR Suppl. 597.

⁵ 186th Law Commission of India Report, *Proposal to constitute Environmental Courts*, 6 (2003), available at <http://lawcommissionofindia.nic.in/reports/186th%20report.pdf>, last seen on 04/12/2017.

Tribunal was setup on 2nd June, 2010. However, the first hearing of the Tribunal was held only in May, 2011.

The present Act has not been amended since its day of enactment and implementation. However, there was a proposed bill i.e. “The National Green Tribunal (Amendment) Act, 2016” which proposed to amend Section 5 of the Act to include “*an advocate of at least 10 years of experience in the High Court or in two or more such courts in succession*” to be appointed as Chairman or Judicial Member of the Tribunal.

CONSTITUTIONAL MANDATE

“A great American Judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above Government and environment above all.”

It was observed by the Hon’ble Supreme Court in *Tarun v. Union of India*.⁶ Such is the significance of environment and its sustainability. The framers of our Constitution inserted various significant provisions in the Constitution, but there was no specific provision which directly dealt with environment and matters relating to it. The following provisions were originally inserted in the Constitution having significance on environment.

Article 21 of the Constitution states that no person shall be deprived of his life and personal liberty except according to procedure established by law. Article 21 has been always been given a multifold interpretation to exclude capricious and whimsical affairs of the State which has the effect of depriving the life or personal liberty of an individual in violation of his fundamental right. Right to life has manifold interpretation. It includes not only right to live with dignity, but also right to good environment and right to livelihood. The Supreme Court has widely interpreted Article 21 to include right to wholesome environment also.⁷

In *Francis Coralie v. Union Territory of Delhi*,⁸ Justice Bhagwati observed: “*We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings.*”

⁶ AIR 1992 SC 514.

⁷ Charan Lal Sahu Etc. Etc. v. Union of India and Others, (1989) 2 SCR Suppl. 597.

⁸ AIR 1981 SC 746.

In *Shanti Star Builders v. Narayan Totame*,⁹ the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. Right to life as interpreted also includes right to enjoyment of pollution free water and air for full enjoyment of life.¹⁰ Furthermore, dealing with pollution, environment and industrialization, the Supreme Court in *Vellore Citizens Welfare Forum v. Union of India*,¹¹ has held that 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 *M. C. Mehta v. Kamal Nath*,¹² the apex court held that various resources such as air, sea, waters and the forests have a huge impact on the individuals as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

Further, Article 42 of the Constitution states that State shall make provisions for security just and humane conditions of work and for maternity relief. The State shall also strive to raise the level of nutrition, standard of living of its people and to improve public health. Moreover, State shall also endeavor to prohibit consumption for medicinal purpose of intoxicating drinks and drugs which are injurious to health.¹³ In *Ratlam Municipality v. Vardhichand*,¹⁴ the Supreme Court relied upon Article 47 of the Constitution and directed removal of open drains and prevention of public excretion by the nearby slum dwellers.

The State also has an obligation to protect every monument, places or object of artistic and historic importance, declared by or under the law made by the Parliament, to be of national importance.¹⁵

Signing of Stockholm Declaration in 1972 occasioned numerous amendments in our Constitution. Article 48A was introduced in Part IV of the Constitution by 42nd Amendment Act, 1976. As per Article 48A, the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

Furthermore, Article 51A (g) was also introduced in Part IV A of the Constitution which imposed a duty upon every citizen of the country to protect and improve the natural

⁹ (1990) 1 SCC 520.

¹⁰ Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.

¹¹ AIR 1996 SC 2715.

¹² (1997) 1 SCC 388.

¹³ Art. 47, the Constitution of India.

¹⁴ AIR 1980 SC 1622.

¹⁵ Art 49, the Constitution of India.

environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

In *Rural Litigation and Entitlement Kendra v. State of U.P.*,¹⁶ the Supreme Court ordered the closure of those lime stone quarries which were adversely disturbing the safety and health of the people living in the area.

COMPOSITION, POWERS AND JURISDICTION

1. Structure

The principal bench of the National Green Tribunal is established in New Delhi with 4 regional benches. The four regional benches are setup at Bhopal (Central Zone Bench), Kolkata (Eastern Zone Bench), Chennai (Southern Zone Bench) and Pune (Western Zone Bench). Apart from these benches, there is one more mechanism which is commonly known as circuit benches. Circuit benches are those benches which can be setup within the territory of any of the respective zones for temporary period to hear specific matters, only when the respective regional bench decides to establish one bench as such. For example, Eastern Zone Bench can decide to set up Circuit Bench in Guwahati or Gangtok for hearing specific matter pertaining to the region to avoid inconvenience and delay during the hearing.

2. Power and Jurisdiction

National Green Tribunal has power to hear and adjudicate matter pertaining to seven laws as enlisted in Schedule I of the National Green Tribunal Act, 2010 viz.

- i. The Water (Prevention and Control of Pollution) Act, 1974;
- ii. The Water (Prevention and Control of Pollution) Cess Act, 1977;
- iii. The Forest (Conservation) Act, 1980;
- iv. The Air (Prevention and Control of Pollution) Act, 1981;
- v. The Environment (Protection) Act, 1986;
- vi. The Public Liability Insurance Act, 1991;
- vii. The Biological Diversity Act, 2002.

¹⁶ AIR 1987 SC 359.

For all the cases involving substantial question relating to environment including enforcement and remedy pertaining to these seven laws, the Tribunal shall have the original civil jurisdiction. "Substantial question of law prominently involves two issues, i.e.

- i. Direct violation of specific statutory environmental obligation by a person by which:
 - a. The community at large is affected or likely to be affected as against any particular individual or a group of individual;
 - b. The gravity of damage caused to the environment is substantial;
 - c. The damage to public health is broadly measured.
- ii. The environmental consequences relate to specific activity or a point source of pollution."¹⁷

Moreover, Section 14 of the Act further states that any dispute shall not be entertained by the Tribunal after the expiry of six months from the date on which cause of action for this dispute first arose. However, the Tribunal may allow a further period of sixty days for filing of application after the expiry of above mentioned period provided that it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period of six months.

However, it becomes vital to point out that

- i. Wildlife (Protection) Act, 1972;
- ii. The Indian Forest Act, 1927;
- iii. Laws enacted by States relating to Forests, Tree Preservation etc.

¹⁷ Jayashree Khandare, *Role of National Green Tribunal in Protection of Environment*, 4 PARIPEX - Indian Journal of Research 32, 33 (2015), available at https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/December/December_2015_1449635335__12.pdf, last seen on 10/12/2017.

are not included within the purview of National Green Tribunal and any matter involving the provisions of aforementioned laws shall be dealt with only by original Civil Judge of Talukas where the matter arises or respective High Courts or Supreme Court of India through PIL.

Apart from the original jurisdiction, the Tribunal also has appellate jurisdiction. Under its appellate jurisdiction, Tribunal here appeals against the orders and decisions of appellate authority or any board constituted under the legislation mentioned in Schedule 1 of National Green Tribunal Act, 2010 or State Government.

Section 19 of the Act lays down that it is not obligatory for the Tribunal to adopt and abide the procedure as set in Code of Civil Procedure, 1908. Though, it has the same power that as of a Civil Court in deciding matters i.e. summoning and enforcing attendance of any person and examining him on oath; requiring discovery and production of documents; receiving evidence on affidavits; issuing commission for the examination of witnesses or documents; reviewing its decisions etc. Nor, it is required to follow the principles of law of evidence as laid down in Indian Evidence Act, 1872. The Tribunal has power to lay down and follow its own procedure and guidelines. Furthermore, it shall also be guided by principles of natural justice. It can also apply principles of Sustainable Development¹⁸, principle of no fault¹⁹, principle of Polluters Pay²⁰ and precautionary principle²¹ while passing any order or giving any decision.

One of the most effective provisions of the National Green Tribunal Act, 2010 is the enforcement mechanism. The Tribunal may, by order provide for:

- i. Relief and compensation to the victims of pollution and other environmental damages arising under the enactments specified in Schedule I (including accident occurring while handling hazardous substances);
- ii. For restitution of damaged property;
- iii. For restitution of the environment for such area or areas.

which shall in all cases be in addition to the liability imposed or relief provided under Public Liability Insurance Act, 1991. However, for claiming compensation or relief or restitution of property or environment, the aggrieved party has to file an application within a period not exceeding five year from the date when the cause of action first arose. The Tribunal may extend

¹⁸ Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664.

¹⁹ M.C. Mehta v. Union of India, AIR 1987 SC 1086; Indian Council for Enviro-legal Action v. Union of India, (1996) 3 SCC 212.

²⁰ Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647.

²¹ A.P. Pollution Control Board v. Prof.M.V.Nayudu (Retd.) & Others, (1999) 2 SCC 718.

the period of five years for a further period of sixty days only on being satisfied that the applicant has sufficient cause for not being able to file the application within the prescribed period of five years. On non-compliance of the order or decision of the Tribunal, it has power to impose both fine as well as punishment. Tribunal may impose fine up to Rs. 10 crores which may extend up to Rs. 25 crores in case of companies and firms. It can also impose punishment up to three years.

3. Composition, Qualification and Terms of Appointment

Chapter II (Establishment of the Tribunal) of the National Green Tribunal Act, 2010 deals with provisions relating to composition, qualification, terms of appointment and removal of members of National Green Tribunal. The Tribunal shall consists of

- i. A full time Chairperson, who shall be appointed by Central Government in consultation with the Chief Justice of India;
- ii. not less than 10 but subject to maximum limit of 20 Full Time Judicial Members, as the Central Government, may from time to time notify, who shall be appointed by Central Government on recommendation of the Selection Committee;
- iii. not less than 10 but subject to maximum limit of 20 Full Time Expert Members, as the Central Government, may from time to time notify, who shall be appointed by Central Government on recommendation of the Selection Committee.

Moreover, a Chairperson can invite any person having relative expertise in the field to assist the Tribunal in a case in its hands.²²

In order to attain a position as Chairperson, Judicial Member or Expert Member, there are certain qualification that an individual person is required to possess i.e.

- i. Chairperson: one is or has been a judge of Supreme Court of India or Chief Justice of a High Court;
- ii. Judicial Member: one is or has been a judge of Supreme Court of India, Chief Justice or a Judge of a High Court;
- iii. Expert Member:
 - a. One has degree in Master in Science (in physical science of life science) with a Doctorate degree or Master in Engineering or Master in Technology and having

²² S. 4, The National Green Tribunal Act, 2010.

an experience of fifteen years in relevant field including five years of practical experience in the field of environment and forest in a reputed National Level Institute; or,

- b. Has administrative experience of fifteen years including five years of practical experience in dealing with environmental matters in Central or State Government or reputed National Level or State Level Institute.²³

Any of the above mentioned post holders shall not hold any other office during their service under the respective post. Nor shall any of the post holder accept employment in, or connected with the management or administration of any person who was a party to the dispute when the post holder was so presiding, for a period of two years from the date of cessation of such post. A Chairperson, Judicial Member or Expert Member shall hold the office for a period of five years and shall not be eligible for reappointment. However, a Chairperson or Judicial Member shall not hold the office after attaining an age of 70 years in case he is a Judge of Supreme Court of India or 67 years in case he is a Chief Justice or Judge of a High Court. Furthermore, no expert member shall hold office after he or she has attained an age of 65 years.²⁴ All the members can either resign their office by a notice in writing under their hand.²⁵ They can also be removed by the Central Government in consultation with the Chief Justice of India on grounds as are prescribed under the Act.²⁶

However, the said rules as laid down in the National Green Tribunal Act, 2010 has been amended by the Finance Act, 2017. The Government was lately trying to dilute the powers and implication of National Green Tribunal Act. The T.S.R. Subramanian Committee report suggested restraining of various powers enshrined over the Tribunal. The said report was criticized heavily by Parliamentary Standing Committee on Science, Technology, Environment and Forest as any amendment to the National Green Tribunal Act, 2010 shall have serious consequences, especially deterioration of the environment. Despite various controversy and public gripe that may arise due to amending the fundamental structure of the NGT Act, the law has been amended by Section 182 of the Finance Act, 2017 by inserting Section 10A in the National Green Tribunal Act, 2010 which states that qualification, appointment, terms of office, salaries and allowances, resignation, removal and other terms and conditions of the

²³ S. 5, The National Green Tribunal Act, 2010.

²⁴ S. 7, The National Green Tribunal Act, 2010.

²⁵ S. 8, The National Green Tribunal Act, 2010.

²⁶ S. 10, The National Green Tribunal Act, 2010.

service shall be governed by Section 184 of the Finance Act, 2017. Section 184 of the Finance Act, 2017 states that Central Government has power to make rules, by notification in the official gazette for qualification, appointment, terms of office, salaries and allowances, resignation, removal and other matters relating to Chairperson, Judicial Members and Expert Members of National Green Tribunal.

Notification of the Department of Revenue, Ministry of Finance issued on 1st June, 2017 has clearly laid down the rules as “*The Tribunal, Appellate Tribunals and Other Authorities (Qualifications, Experiences and other conditions of service of members) Rules, 2017*” which has substituted the already existing rules as contained in National Green Tribunal Act, 2010. The said change has brought administrative interference in the impartiality and independence of the Tribunal, exposing the rules and laws to administrative discretion and biasness. Thus, this change has put the statutory provisions of NGT under the aegis of delegated legislation.

The new rules have set the following criteria for appointment of Chairperson of the National Green Tribunal:

- i. is, or has been, or is qualified to be, a Judge of Supreme Court; or
- ii. is, or has been, Chief Justice of a High Court; or
- iii. has, for a period of not less than three years, held office as Judicial Member or Expert Member;
- iv. or is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in law including five years’ practical experience in the field of environment and forests.

The policy makers have forgotten that the National Green Tribunal is an apex environmental tribunal. Any judgement or order in an appeal is preferred before the Supreme Court of India. Moreover, the Chairperson of the Tribunal is entirely responsible for the leadership and administrative function of the Tribunal. But the new rules clearly does not consider any of these important aspects associated with the post of Chairperson. The administrative body is considering to appoint a person having only three years of experience as a Judicial Member or Expert member as the Chairperson of the Environmental Tribunal, a tribunal which is entrusted with the task of disrupting and bringing an end to the malpractices of various government bodies and individual agencies whose sole purpose is to gain benefit out of a project, completing ignoring the adverse, deleterious and negative implication on the environment and

society. Moreover, if an Expert member is appointed as the Chairperson of the Tribunal, this rule shall demonstrate that a Tribunal which has the trappings of a regular court can be presided over by a person without any legal background and training with only three years of experience. Ironically, it will largely affect the pendency of suits relating to environment as there may arise serious irregularities in judgment and orders of the Tribunal by reason of inexperience of presiding officer in legal matters. On the contrary, the Supreme Court shall be required to allot a lot more time in considering an appeal from the order or judgement of the Tribunal and hear the matter in detail before upholding or modifying the decision in an appeal, while such quasi-judicial body was setup in order to reduce the burden on regular courts.

Disregarding the position of administrative adjudicators, the Supreme Court has held that, “a lifetime of experience in administration may make a member of the civil services a good and able administrator, but not a necessarily good, able and impartial adjudicator with a judicial temperament capable of rendering decisions which have to (i) inform the parties about the reasons for the decision; (ii) demonstrate fairness and correctness of the decision and absence of arbitrariness; and (iii) ensure that justice is not only done, but also seem to be done.”²⁷

These new rules have not only affected the appointment qualification of Chairperson but also Judicial Member. As per the new rules, any person who is, or has been, or is qualified to be, a Judge of a High Court; or, has, for at least ten years, held a judicial office in the territory of India is qualified to be appointed as the Judicial Member of the National Green Tribunal. The term judicial office is very wide and vague which includes within its ambit all the offices of judicial nature irrespective of their level and departments. According to the provisions of new rules, a member of the Transport Tribunal or National Company Law Tribunal can be appointed as a Judicial member of National Green Tribunal if such personnel is having an experience of ten years in judicial office, even though, he may be unaware about the technicalities and trifles of environmental issues. Moreover, it is to say that, any such person can be appointed as a Judicial Member, a post which heads various zonal benches of the National Green Tribunal wherein they are no subordinate to the Principal Bench at Delhi. Earlier, as per the National Green Tribunal Act, the post required skill and expertise of an experienced personnel while disseminating judgment and order, which now can be easily filled up by an advocate with ten years of experience, without any experience as an adjudicator.

²⁷ Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1; Madras Bar Association v. Union of India, (2014) 10 SCC 1.

The new rules have also changed the qualification requirement for appointment of an Expert member in the National Green Tribunal. Now, any person having a degree, post-graduation degree or a Doctorate Degree in Science and has an experience of twenty years in the relevant field including five years' practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution can be appointed as an Expert Member. Earlier, according to the National Green Tribunal Act, a doctorate degree in the field of science along with five years' of experience in the field of environment and forests was compulsorily required for appointment of an Expert member. The functioning of the tribunal requires the Judicial member to take advice from Expert members on matters before them and give its decision on basis of both law and science in order to effectuate a better and conducive environment. This will eventually vitiate the decision of the judicial members as the advice and technical aid provided by a member holding degree in science shall undoubtedly be substandard as against an advice provided by a member holding doctorate degree in science. The Supreme Court in *Union of India v. R. Gandhi*,²⁸ has shown its concern towards dilution of qualification of personnel appointed in Tribunal by observing as follows:

“The speed at which the qualifications for appointment as members are being diluted is, to say, the least, a matter of great concern for the independence of Judiciary”

Apart from the qualification of the members of the Tribunal, the new rules have also affected the structure of the selection committee entrusted with the duty of recommending the names of personnel for appointment as a Judicial Member and an Expert member. Before the notification of the said rule, the selection committee was headed by a sitting judge of Supreme Court to be appointed by the Chief Justice of India. It included Chairperson of the Tribunal as a member along with an expert in the field on Environment and Forest Policies. The only government post which had been authorized to sit as a member of selection committee is the Secretary of Ministry of Environment and Forest. However, with the amendment in the said rules, the composition of the selection committee is subjected to a lot of administrative interference and control over the appointment of Judicial and Expert members. As per the new rules, the committee will be headed by a person appointed by the Central Government as against a sitting judge of Supreme Court. Moreover, the place of Chairperson in the selection committee has been replaced with two secretaries from the Government, one being Secretary of Ministry of

²⁸ Ibid 27.

Environment and Forest. This new rule have infested the entire mechanism with administrative biasness and arbitrariness and has fundamentally taken away one of the essential trappings being independence of Judiciary. The National Green Tribunal hears appeal against the decision of these secretaries. Any person appointed at the instance of such Secretaries are unlikely to reverse their decision or take strict action against the government administrators. The application of said rules has transferred the entire independence of the Tribunal in the hands executive and their venomous control.

The term of office of such officials have also been reduced to three years from the already existing five years as per the new rules. Again, this step will affect the quality of decision or judgment given by the members of the Tribunal. A significant period is essential to obtain achievement and expertise in any relevant field. The reduction in tenure will seriously impair the Tribunal from the expertise of already existing members, who have attained the complex environmental expertise through their experience as a member of the Tribunal. Moreover, the reduction in tenure will also discourage the younger generation to apply for the post of member in the tribunal. What is left, is the retired generation who apply for the post. Change in the tenure has two fold negative effect on the mechanism of the tribunal, i.e.

- i. Term of three years being very short, a member's tenure will be over by the time he gains expertise and relevant knowledge in the field for effectuating better decision making; and
- ii. Depriving the institution of Tribunal from younger generation updated with latest development in science and technology, which is not so evident with the older and retired generation.

The new rules has also effected change in the salaries and allowances of the members of the Tribunal. Though, the salaries and allowances are changed to the disadvantaged of these members, it does not contrast with the concept of impartiality and independence of tribunal as it was, when the rules of National Green Tribunal Act, 2010 were in force. However, one of the major setback in the independence and impartiality of the tribunal is the mention of the fact that National Green Tribunals are under the control of Ministry of Environment and Forest in the new rules which is against the decision of the National Green Tribunal in the case of *J. Wilfred v. Union of India*,²⁹ i.e.

²⁹ (2014) All. 1 NGT Reporter 2.

“There is nothing in the provisions of the NGT Act that directly or even by necessary implication is indicative of any external control over the National Green Tribunal in discharge of its judicial functions. MoEF is merely an administrative Ministry for the National Green Tribunal to provide for means and finances. Once budget is provided, the Ministry cannot have any interference in the functioning of the National Green Tribunal. Entire process of appointment and even removal is under the effective control of the Supreme Court of India, as neither 31 appointments nor removal can be effected without the participation and approval of a sitting judge of the Supreme Court of India. The administration is merely an executing agency within the framework of the Act.”

The Tribunal, Appellate Tribunals and Other Authorities (Qualifications, Experiences and other conditions of service of members) Rules, 2017 has an evil effect of reducing the efficiency and effectiveness of the National Green Tribunal. These rules bring forth inexperience and lack of expertise in functioning of the tribunal by lowering the qualification of appointment of Chairperson to only three year of experience as Judicial or Expert member. It will certainly affect the quality of decision manned by people possessing lesser stance and training. The control of Ministry of Environment and Forest over the National Green Tribunal is bound to erode the public confidence over the impartiality and independence of such an institution. The basic aphorism is that one cannot do things indirectly, which cannot be done directly. Section 10 A of the National Green Tribunal Act, 2010 read with the provisions of the Finance Act, 2017 and the Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017 is meant to ensure the executive takeover and control over judicial functions.³⁰ The executive have utterly neglected the status of the National Green Tribunal which lies on a higher footing from that of other tribunals pursuant to our obligation towards international conventions and declarations. Independence of the Judiciary is basic structure³¹ of the Constitution of India and a rule of law. Rule of law suggests that the Judiciary should be independent and free from executive control i.e. there must be separation of powers. Implementation of these new rules have not only disregarded the basic structure of Constitution and Rule of Law, but also various judicial

³⁰ Ritwick Dutta, *How The Finance Act 2017 Cripples National Green Tribunal (NGT)*, Live Law (07/07/2017), available at <http://www.livelaw.in/finance-act-2017-cripples-national-green-tribunalngt/>, last seen on 29/12/2017.

³¹ Supreme Court Advocates-on-Record Association v. Union of India, (1993) 4 SCC 441; State of Bihar v. Bal Mukund Shah, (2000) 4 SCC 640; Shri Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428; All India Judges Association v. Union of India, (2002) 4 SCC 247.

precedents that has hold right to clean, healthy and pollution free environment as a part of Article 21 of the Constitution of India.³²

Discussing the concept and functioning of alternative dispute mechanism, Supreme Court in **R.K Jain v. Union of India**,³³ has observed as follows:

“So long as a the (sic) alternative institutional mechanism or authority set up by an Act is not less effective than the High court, it is consistent with constitutional scheme. The faith of the people is the bed- rock on which the edifice of judicial review and efficacy of the adjudication are founded. The alternative arrangement must, therefore, be effective and efficient. For inspiring confidence and trust in the litigant public they must have an assurance that the person deciding their causes is totally and completely free from the influence or pressure from the Govt.”

However, a PIL has been moved by Congress MP and former environment minister, Mr. Jairam Ramesh against the new rule stating that this new rule violates the basic structure of the Constitution and affects the impartiality of the Tribunal and its members by arguing that, *“By giving Central Government such unbridled power in relation to determination of such conditions of service of members of the NGT, the principle of separation of powers, which is a part of the basic structure of the Constitution, is being violated. The Supreme Court has repeatedly held that judiciary including the tribunals must be free from executive control.”*³⁴ He further stated in his pleadings that, *“What prevented the Government from coming with an Amendment to the National Green Tribunal Act, having the debate? They would have passed those amendments in Lok Sabha. They may or may not have passed the amendments in the Rajya Sabha but there would have been a debate. But, they have used the route of the Finance Bill to completely emasculate the National Green Tribunal.”*³⁵ The Supreme Court has after considering the pleading of Mr. Jairam Ramesh and gravity of the matter involving faith of public confidence and constitutionality of the rules, issued a notice to the Centre. The National Green Tribunal is the hope of our country towards promoting a healthy and conducive environment for people and it is upon Supreme Court to decide the constitutionality of the said rules which grossly violates the mandate of impartiality and independence of the National Green Tribunal.

³² Subhash Kumar v. State of Bihar, (1991) 1 SCR 5.

³³ (1993) 4 SCC 119.

³⁴ Jayashree Nandil TNN, *Finance Act 2017 emasculates the National Green Tribunal: PIL in SC*, The Times of India (05/08/2017), available at <https://timesofindia.indiatimes.com/india/finance-act-2017-emasculates-the-national-green-tribunal-pil-in-sc/articleshow/59928357.cms>, last seen on 29/12/2017.

³⁵ Ibid 34.

NEED FOR MECHANISM

The need for specific step towards protection and improvement of environment was first initiated in United National Conference on Human Environment at Stockholm in the year 1972. The specific step did not involve establishment of any specialized forum for handling environmental matters. It was only in 1992 i.e. India's next international participation in United Nations Conference on Environment and Development, a duty was imposed upon the participating states to provide for a mechanism for effective access, redressal and remedy through judicial and administrative proceedings. After which, many steps were taken over the period of time and led to the establishment of National Green Tribunal under the National Green Tribunal Act, 2010.

National Green Tribunal is a specialized quasi-judicial body entrusted with the duty to maintain a standardized level of environment for sustainable development by providing effective access, redressal and remedy to victims of pollution and environmental degradation and to impose fine and imprisonment upon those people who tend to degrade or pollute the environment. It has been setup as an alternative body to the original courts for various reasons. Some of which are listed below:

1. Reducing burden on Original Courts

Since independence, the Parliament of our country have endeavored hard to bring all the facets of the society within the realm of legislations. Currently, the legislators are enacting statutes to accomplish their tedious and extremely imperative agenda. However, with the increase in legislations, there is wide spread increase in filing of suits in various courts across the country. Filing of suits and fighting for one's right through legal path has always been cherished for the greatest interest of the economy. Problem arises when the suits filed are not decided within a reasonable time. The courts in India, be it the apex court of the nation, i.e. the Supreme Court of India or court at the grass root level of the country, are suffering from the same scenario viz. "the burden of suits". Today, in India, there are almost 2.23 crore cases. This statistics clearly depicts the picture of belligerent judiciary of the country. Even though, judges and lawyers are whole-heartedly trying to meet the end of justice as soon as possible without putting the rudiments of uprightness and righteousness. This enormous amount of pending suits will not reduce until and unless effective alternative mechanism are installed in our judicial system. Establishment of National Green Tribunal has the effect of reduction of burden on original

courts by dedicating all the issues relating to environmental matters to National Green Tribunal with a provision for an appeal to Supreme Court.

2. Provide speedy and time saving remedy

The National Green Tribunal has been setup as an alternative mechanism to the original courts to provide speedy and time saving remedies. Right to speedy trial and decision is essence of ones' life. A person cannot be kept at abeyance for a long period because of elongated and tedious procedure of the court. Right to speedy trial is part of Article 21 of the Constitution of India and hence is a fundamental right of an individual.³⁶ Tribunals are not full-fledged courts, but they possess many of trappings of a regular court and exercise quasi-judicial functions.³⁷ Even though Tribunal possess these trappings, there are some differences that allows Tribunals to provide speedy and time saving remedy. Most of the tribunals are not bound by the strict rules of procedure and evidence prescribed by the Civil Procedure Code and Evidence Act, which a regular court is bound to follow. These tribunals follow the principles as are prescribed under the respective statute under which they are established. However, tribunals have to follow the principle of natural justice while deciding any matter, deviation from which shall amount to arbitrariness.

National Green Tribunal is also not bound by the rules of procedure and evidence, but has the power to regulate its own procedure.³⁸ It also follows principle of sustainable development, the precautionary principle and the polluters pays principle while disseminating its judgment.³⁹ Non-observance of strict rules of procedure and evidence allows tribunal to adopt a mechanism that promotes to provide speedy and time saving remedy to the aggrieved party.

In *Indian Council for Enviro-Legal Action v. Union of India*,⁴⁰ the Hon'ble Supreme Court observed that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.

In *Charanlal Sahu v. Union of India*,⁴¹ 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

³⁶ Hussainara Khatoon v. Home secretary, State of Bihar, AIR 1979 SC 1369.

³⁷ Bharat Bank v. Employees, AIR 1950 SC 188.

³⁸ S. 19, The National Green Tribunal Act, 2010.

³⁹ S. 20, The National Green Tribunal Act, 2010.

⁴⁰ (1996) 3 SCC 212.

⁴¹ *supra* 4.

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.”

3. Cheaper form of remedy

In *M.C. Mehta v. Union of India*,⁴² the Hon'ble Supreme Court said that in as much as environment cases involve assessment of scientific data, it was desirable to set up environment courts on a regional basis with a professional Judge and two experts, keeping in view the expertise required for such adjudication. As per the mandate of Supreme Court of India, National Green Tribunal has one principle bench established at Delhi and four regional benches established at Bhopal, Kolkata, Chennai and Pune. Apart from these five permanent setup, the National Green Tribunal also follows the concept of circuit benches. These benches are setup at any other location for a temporary period only upon the decision of any of the five permanent tribunals. Setting up of these temporary circuit benches provides justice at the very door step of the aggrieved party. The aggrieved party is not required to travel a long distance for seeking his remedy. When the tribunal decides to establish a circuit bench for trial of any case, it reduces the overall burden of cost over the parties who are mostly located within the vicinity of environment which is being degraded. The parties will not have to travel to another city for hearing. It will increase their turnover rate at the tribunal. It will indirectly lead to avoidance of unnecessary delay and adjournment which arises due to non-appearance of the parties. On the other hand, it also allows the members of the tribunal to visit the site, understand and scrutinize the ill effects on the environment effectively and efficiently. As a whole, it will lead to speedy and effective dissemination of justice at cheaper cost.

4. Availability of skill and expertise of professionals.

The Hon'ble Supreme Court have time and again observed for establishment of Environmental courts with professional judges and two experts, keeping in view the complexity of matter involved in environmental issues.⁴³ Unlike a civil or criminal case of general nature, environmental matter, though civil or criminal, not only contains the general application of law and rules but also complex and concrete scientific and technological issues that are outside the knowledge and experience of a professional judge. Professional Judges are expert in their field of study i.e. law. But, when the matters involves peculiarities and complex terminologies of

⁴² (1986) 2 SCC 176.

⁴³ *ibid* 42.

science and technology, expertise of these professionals are inadequate. They require advice from those who are experts in the field of science and technology, who can understand the environment as well as machines and other complex phenomenon that may have adverse bearing on the environment and individuals in the locality. These experts guide the judicial members on the science involved in the issue for better and effective decision making. Barring the professional adjudicators from the advice and guidance of these experts shall have a deterrent effect in the decision making process and the environment itself. The composition of the National Green Tribunal requires to appoint an expert members, who shall have the sole responsibilities to guide the judicial members on scientific and technical matters for speedy and effective decision making.

In the judgment of the Supreme Court of India in *A.P. Pollution Control Board v. M.V. Nayudu*,⁴⁴ the Court referred to the need for establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as part of the judicial process, after an elaborate discussion of the views of jurists in various countries.

LANDMARK JUDGMENTS

Since the day of its establishment, National Green Tribunal has been working progressively and proficiently towards protection of environment and the rights of aggrieved people. Keeping its impartiality, it has come down heavily not only over the corporate giants and resourceful individuals but also the government agencies who have been trying to benefit their sole interest neglecting the environment and sustainable development. National Green Tribunal during its period of seven years have come up with appreciable judgments depicting that we have an independent tribunal which shall not compromise with the environment and shut down any venture or project which will have ill or deleterious effect on the environment.

In *Jeet Singh Kanwar v. Union of India*,⁴⁵ the Tribunal annulled the environmental clearance granted by MoEF to a power plant project as it was in contravention to the precautionary principle and the economic benefits were highly disproportionate to the excessive environmental degradation. The Tribunal also annulled an environmental clearance granted without any public hearing violating the principle of natural justice.⁴⁶

⁴⁴ *supra* 4.

⁴⁵ Appeal Number. 10 of 2011 (Tribunal, 16/04/2003).

⁴⁶ *Adivasi Majdoor Kisan Ekta Sangthan v. Ministry of Environment and Forests*, Appeal Number. 3 of 2011 (20/04/2012).

On 25 April 2014, The NGT said that the health of Yamuna will be affected by the projected recreational facilities on the river and suggested that Government should take steps to declare a stretch of 52 km of the Yamuna in Delhi and Uttar Pradesh as a conservation zone. In 2015, Art of Living Foundation was penalized for organizing World Cultural Festival on Yamuna Floodplain and degrading the environment.

Again, in *Vardhaman Kaushik v. Union of India*,⁴⁷ the Tribunal scrutinized the pollution level in the capital city of Delhi. Looking at the alarming figures, it directed a Committee to take preventive steps to overcome the issue. Further, it ordered banning of vehicles that were more than 15 years old. The tribunal also issued an order to prohibit burning of plastics and other harmful materials and further ordered establishment of special task force to look into the matter with prominence. The National Green Tribunal also ordered banning of diesel vehicles older than 10 years across the state of Kerala imposing hefty fines on defaulters.

Another prominent case of *Tribunal at its Own Motion v. Ministry of Environment & Forests*,⁴⁸ the NGT observed that wildlife was a part of the environment and that any action that harms or causes damage to wildlife will be dealt with under the purview of the tribunal. And in one of the most recent matters of *Sunil Kumar Chugh v. Secretary, Ministry of Environment and Forests, New Delhi*⁴⁹ the Principal Bench at New Delhi held that open spaces, adequate parking facilities in buildings and recreational grounds have an important bearing on a person's right to life. This case is believed to have set a precedent in penalizing violators and setting aside the illegal grants of environmental clearances and stand out as a landmark judgment for environmental jurisprudence.

The National Green Tribunal annulled the environmental clearance granted to National Thermal Power Corporation as the clearance was obtained by way of misrepresentation of facts. Moreover, the Tribunal found the corporation guilty and imposed penalty for such misrepresentation.⁵⁰ One of the notable judgment of NGT is the annulment of the clearance given by the then Union Environment and Forests Minister, Jairam Ramesh, to the Parsa East and Kante-Basan captive coal blocks in the Hasdeo-Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee.

CONCLUSION

⁴⁷ Original Application No. 21 of 2014.

⁴⁸ Original Application Number 16 of 2013 (04/04/2014).

⁴⁹ Appeal No. 66 of 2014.

⁵⁰ M.P. Patil v. Union of India, Appeal Number 12 of 2012 (13/03/2014).

Prior to establishment of National Green Tribunal, the Supreme Court was burdened with all the cases relating to environmental matters, however, lacking expert knowledge in field of science and technology. The Supreme Court had to rely on third party scientific agencies for advice and monitoring purpose. The Supreme Court had time and again directed the government to establish a specialized forum to look into environmental issues. As a result of this, National Green Tribunal was setup. It is a specialized forum which deals exclusively with environmental issues. The most prominent feature which National Green Tribunal has is the enormous amount of time to deal with environmental matters equipped with expertise and knowledge of Expert members of the Tribunal. The Tribunal has since the day of its establishment tried to achieve a better and conducive environment by its valuable decision making authority. The legal framework and functioning of the Tribunal is quite smooth to encourage any form of collapse or biasness. Rather, it has been playing an important role in Environmental Impact Assessment and industrial zoning.

Currently, National Green Tribunal is facing a lot of controversy with regards to its composition and appointment of bureaucrats with no legal experience and expertise as the Chairperson of the Tribunal. Moreover, the Tribunal, Appellate Tribunals and Other Authorities (Qualifications, Experiences and other conditions of service of members) Rules, 2017 has changed the composition of the selection committee entrusted with the duty of appointing judicial members and expert members of the Tribunal exposing it to administrative discretionary control, arbitrariness and biasness. However, the constitutionality of the said new rules is questionable considering the fact that the matter is sub-judice in Supreme Court of India. It is expected that the Supreme Court will rule out the said rules keeping in view the ill effect of said rules over the impartiality and independence of the Judiciary. Critics of National Green Tribunal also oppose the appointment of expert member in the body of tribunal because Tribunal like courts are required to decide a matter on question of law and not environmental facts. Despite such irregularities, National Green Tribunal has come forward as a consistent institute of righteousness and progressiveness in dealing with environmental matters. It has redefined the role of experts in environment-related fields and has been successful in implementing its orders especially with regards to the illegal environmental clearances given.