

India's New Environmental Court: The National Green Tribunal

by Ritwick Dutta¹

India recently established its first comprehensive environmental court: the National Green Tribunal ('NGT'). The earlier courts/ tribunals were either non-functional or with every limited mandate. India's environmental court is a result of the need repeatedly expressed by the Constitutional courts on the need to have specialized Judicial bodies to deal with complex environmental questions. The trigger for setting up Environmental Courts was through the Supreme Court of India which in its judgments highlighted the difficulties faced by Judges in adjudicating on environment. In *M.C. Mehta vs. Union of India*², the 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. The Court observed:

"... since cases involving issues of environmental pollution, ecological destruction and conflicts over national resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up environment courts on the regional basis with one professional Judge and two experts drawn from the Ecological Sciences Research Group keeping in view the nature of the case and the expertise required for its adjudication. There would of course be a right of appeal to this Court from the decision of the environment court."

The other judgment was *Indian Council for Enviro-Legal Action vs. Union of India*, 1996(3) SCC 212, in which the Supreme Court observed (see p. 252) that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. It was however, in *A.P. Pollution Control Board vs. M.V. Nayudu*³, the Court dealt at length on the need for establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, In the subsequent follow-up judgment in *A.P. Pollution Control Board vs. M.V. Nayudu*⁴, the Supreme Court, referred to the serious differences in the constitution of appellate authorities under plenary as well as delegated legislation (the reference here is to the appellate authorities constituted under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981), and pointed out that except in one State where the appellate authority was manned by a retired High Court Judge, in other States they were manned only by bureaucrats. These appellate authorities

¹ Environmental Lawyer and coordinator of the Legal Initiative for Forest and Environment (LIFE), New Delhi. And The Access Initiative India ritwickdutta@gmail.com

² 1986(2) SCC 176

³ 1999(2) SCC 718

⁴ 2001(2) SCC 62

were not having either judicial or environment back-up on the Bench. The Supreme Court opined that the Law Commission could therefore examine the disparities in the constitution of these quasi-judicial bodies and suggest a new scheme so that there could be uniformity in the structure of the quasi-judicial bodies which supervise the orders passed by administrative or public authorities, including orders of the Government.

The tragic Bhopal gas disaster in 1984, also led the Supreme Court to emphasize on the need for constitution of environmental courts. In *Charan Lal Sahu Vs Union of India*⁵, the Court observed:

A Transnational Corporation should be made liable and subservient to laws of our country and the liability should not be restricted to affiliate company only but the parent corporations should also be made liable for any damage caused to the human beings or ecology. The law must require transnational Corporations to agree to pay such damages as may be determined by the statutory agencies and forum constituted under it without exposing the victims to long drawn litigation. In order to meet the situation, to avoid delay and to ensure immediate relief to the victims, the law should provide for constitution of tribunals 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. The law should also provide for interim relief to victims during the pendency of proceedings. These steps would minimise the misery and agony of victims of hazardous enterprises

The Rio conference in 1994 and specifically Principle 10 of the Rio Declaration provided an important trigger for enactment of laws constituting environmental courts. Two specific laws were passed viz, the National Environment Tribunal Act, 1995 for adjudicating on claims and compensation for victims of environmental disasters and the National Environment Appellate Authority Act, 1997. The National Environment Tribunal was never made functional while the National Environment Appellate Authority (NEAA) functioned with full composition only for 3 years. The NEAA had a very limited mandate and served as an appellate body against the decision of the Ministry of Environment and Forest granting environment clearance to a project

The issues concerning environmental Courts were considered by the Law Commission of India and dealt at length in its 186th Report⁶. The Commission which submitted its report on September 2003 dealt at length, with the existing environmental courts and Tribunals and well as recommendation as to how the new environmental courts should be set up. The Law Commission's Report was critical of the manner of functioning of existing environmental courts. The report states as follows:

Thus these two National Environmental Tribunals are today unfortunately non-functional. One had only jurisdiction to award compensation and never actually came into existence. The other came into existence but after the term of the first Chairman ended, none has been appointed.

⁵ 1990 AIR 1480

⁶ <http://lawcommissionofindia.nic.in/reports/186th%20report.pdf>

In recommending for the establishment of environmental court, the Law Commission was guided by the model of environmental court established in New Zealand and the Land and Environmental Court of New South Wales. The following excerpts from the letter⁷ of Justice M. Jagannandha Rao, Chairperson of the Law Commission to the Law Minister of India, adequately sum up the need for environmental courts as well as the basis for the recommendation:

Pursuant to the observations of the Supreme Court of India in four judgments, namely, *M.C. Mehta vs. Union of India*, 1986 (2) SCC 176; *Indian Council for Environmental-Legal Action Vs Union of India*: 1996(3) SCC 212; *A.P. Pollution Control Board Vs M.V. Nayudu*: 1999(2) SCC 718 and *A.P. Pollution Control Board Vs M.V. Nayudu II*: 2001(2) SCC62, the Law Commission has undertaken a detailed study of the subject of "Environmental Courts". In the 3rd of the above judgments, reference was made to the idea of a "multi-faceted" Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries. Having regard to the complex issues of fact of science and technology which arise in environmental litigation and in particular in the elimination of pollution in air and water, it is now recognized in several countries that the Courts must not only consist of Judicial Members but must also have a statutory panel of members comprising Technical or Scientific experts. We may in this context refer to the recent Report of Dr. Malcolm Grant in UK (2000) and also to the Report of the Royal Commission (23rd Report, March 2002). With Judicial and Technical inputs on the Bench, the Environmental Courts in Australia and New Zealand function as appellate Courts against orders passed under the corresponding Water Acts, Air Acts and Noise Acts and various Environment related Acts and also have original jurisdiction. They have all the powers of a Civil Court. Some have even powers of a Criminal Court.

The Commission has, therefore, prepared a Report... and suggested... these Courts must be established to reduce the pressure and burden on the High Courts and Supreme Court. These Courts will be Courts of fact and law, exercising all powers of a civil court in its original jurisdiction. They will also have appellate judicial powers against orders passed by the concerned authorities under the Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 with an enabling provision that the Central Government may notify these Courts as appellate courts under other environment related Acts as well. Such a law can be made under Art. 253 of the Constitution of India read with Entry 13A of List I of Schedule VII to give effect to decisions taken in Stockholm Conference of 1972 and Rio Conference of 1992. The proposed Environment Courts at the State level will, in the Commission's view, be accessible to citizens in each State.

The experience with environmental Courts till the enactment of the National Green Tribunal Act, 2010 was not positive. Most of the Appellate Authority Constituted under the Air and Water Act were manned by non-judicial or even technical/ scientific persons and became a

⁷ As contained in the 186th Report of the Law Commission of India dated 23-09-2003

‘retirement home’ for retired officials. The situation of the National Environment Appellate Authority was most shocking, forcing the Delhi High Court to pass strictures against the Government of India and specifically the Ministry of Environment and Forest. Thus, Justice Dr S Muralidhar was constrained to observe in *Vimal Bhai Vs Union of India*:

..32. Since 2nd July 2000 the office of the Chairperson NEAA has remained vacant. The office of the Vice-Chairperson has remained vacant since 1st August 2005. The reason for the posts have remaining vacant has been noticed earlier. They leave this Court in no doubt that the Union of India is not at all serious about having an effective functioning NEAA. That the government has been lackadaisical is obvious. This Court finds the failure of the government to appoint a Chairperson for over eight years inexcusable. A headless NEAA has thus been rendered and ineffective by the act of omission of the government. The intention of Parliament in requiring the government to constitute an independent body for quick redressal of public grievances in relation to grant of environmental clearances has thus been defeated.

In 2010, the Parliament in India enacted the National Green Tribunal Act as a National level Tribunal on all civil cases related to Environment. The National Green Tribunal (NGT) replaced the National Environment Appellate Authority and has both original as well as Appellate Powers. The NGT came into force on the 18th of October, 2010 and became fully functional on the 4th of July, 2011. It today comprises of three judicial members and four technical members and can be regarded as the first serious effort on the part of the Government of India to set up environmental courts with a wide jurisdiction at the national level. However, the NGT’s is yet to be fully functional since all the appointments are yet to be made and the necessary infrastructure are yet to be provided. However, it is significant to note that since 2010, the Supreme Court of India has been monitoring the setting up of the NGT on a monthly basis and has passed numerous directions on how to make it an effective forum for adjudication of environmental disputes.

Section 14 of NGT Act, 2010 states as,

“Tribunal to settle disputes.--- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I. Page 4 of 6 (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.”

Under section 14 of the NGT Act, 2010 the Tribunal shall have jurisdiction on 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 appended to the NGT Act⁸. The Tribunal shall settle disputes, provide relief & compensation and may order restitution of damaged environment.

⁸ Scheduled 1:

The Water Act, 1974;
The Water Cess Act, 1977;
The Forest (Conservation) Act, 1980;
The Air Act, 1981;

The NGT has the national jurisdiction, which is divided into circuit courts. This tribunal has been established by the Central Government has power to hear any matter pertaining to environment which has happened in the territory of this country.

Significant Decisions of the National Green Tribunal

- The NGT has passed significant decisions since it started hearing cases from the 4th of July, 2011. The judgments have ranged from interpreting the meaning of the word 'aggrieved person' and broadening the same to include concerned persons irrespective of whether they are directly affected or not to directing cumulative impact assessment, radiation studies to review of guidelines for environmental sittings. Some of the key decisions of the NGT have been:
- The NGT bench comprising of Justice A.S. Naidu and Dr. G.K. Pandey in *Jan Chetna vs. Union of India* (Appeal No 22/2011 (T)) took a strong view on the conduct of the EIA consultant who furnish 'cooked data' and 'wrong data' in the Environment Impact Assessment Report and asked MoEF to develop proper mechanism to check authenticity of environmental data reported in the EIA/EMP report. Also, steps should also be taken for black listing such Consultants. The Tribunal directed the Ministry of Environment and Forests to develop appropriate mechanism to check the authenticity of environmental data reported in the EIA/EMP report which would facilitate a more realistic environmental appraisal of project. Steps should also be taken for black listing Consultants found to have reported "cooked data" or "wrong data" and for producing sub-standard EIA/EMP report.
- The NGT Bench of Justice C V Ramalu and Dr. D K Agrawal, in *Vimal Bhai and Ors Vs Union of India* and Ors expanded the meaning of "**person aggrieved**" and held that protecting and improving the natural environment is the fundamental duty of a citizen under the Constitution and therefore any person can approach the Tribunal and agitate his grievance as to protection and improvement of the natural environment.
- The National Green Tribunal on hearing an application challenging the construction of Solid Bio-Waste Management Plant at Himachal Pradesh issued directions to the Ministry of Environment & Forest to critically review the Municipal Solid Waste (Management and Handling) Rules, 2000 (MSW) and make them more pragmatic and workable. The application was filed by Gram Panchayat (Majthali) and seeking prevention of setting up of the waste disposal plant at village on the ground that the mandatory requirements stipulated in the MSW Rules have not been duly followed. [Judgment dated 11-10-2011 in the case (2/2011) Gram Panchayat, Totu (Majthali) & others vs. State of Himachal Pradesh and others].
- The National Green Tribunal in the judgment dated 20.09.2011 issued directions to the Ministry of Environment & Forests to conduct a scientific study with regard to the long term impacts of nuclear radiation caused by the thermal power plants. The directions were issued by the NGT Bench comprising Justice C.V. Ramulu and Dr. Davendra Agrawal on hearing the appeal [Appeal No. 7/2011(T)] filed by the residents of the Koradi village against the 'Environment Clearance' granted to the

Maharashtra State Power Generation Co. Ltd for expansion of 3x660 MW coal based thermal power plant at Koradi in Nagpur district of Maharashtra.

The Tribunal issued the following directions to the Ministry of Environment & Forests:

Long term study with regard to the impacts of nuclear radiation:

To conduct a long term study of the impacts caused by nuclear radiation from the thermal power projects by involving Bhabha Atomic Research Agency or any such other recognized institution dealing with nuclear radiation with reference to the coal ash generated by the thermal power project particularly the cumulative effect of a number of thermal power project located in the area on human habitation, environment and ecology and to also consider the health profile of the residents within the area in which the pollutants are expected to spread from the thermal power project.

Radiation studies to be a mandatory part of the Terms of Reference:

To include in the Terms of Reference of all the future projects asking the proponent to furnish details of possible nuclear radioactivity levels of the coal proposed to be used for the thermal power plant.

National Standards to be prescribed from the Department of Atomic Energy:

To get the national standards prescribed from the Department of Atomic Energy, Govt. of India within a period of one year from the date of receipt of this order, as to the permissible levels of nuclear radiation in residential, industrial and ecologically sensitive areas of the country

[Case: Krishi Vigyan Arogya Sanstha & Ors Vs Ministry of Environment & Forests & Ors]

- In respect of hydel power projects coming up in the Himalayan region and specifically the State of Uttarakhand, the NGT in Vimal Bhai vs. Union of India (Appeal No. 5/2011) directed the Ministry of Environment and Forest to setup an appropriate committee of experts drawn from Indian Institute of Technology, Rurkee (IITR) and Wildlife Institute of India (WII) in the preparation of Cumulative Impact Assessment (CIA) report of the five projects considered in WII report to integrate the physical, biological and social impacts in making comprehensive cumulative impact assessment report and frame appropriate conclusions and recommendations within a reasonable timeframe for consideration and final review by the Ministry of Environment and Forests to avoid any unforeseen environmental and ecological threat in the study area. Further in order to ensure sound evaluation of forestland diversion proposals MoEF was asked to prepare the guidelines for cost benefit analysis, may be updated/modified to provide clear instructions regarding the various cost and benefit elements to be incorporated for the purpose of arriving at cost benefit ratio and applications for Forest Diversion will be done following the prescribed procedure.

It is too early to conclude as to the effectiveness of the NGT. However, the judgements and decisions of the NGT within the limited time and human resources have been significant. The NGT has not only provided substantial relief but had also directed for legal and procedural reform. In a country which is obsessed at 'development' unmindful of its social and ecological impact, the role of the NGT as an institution to maintain a fine balance between industrialization and environmental and livelihood security is of critical importance. The task however is not easy. At present, India's environmental movement sees the NGT as a hope in the face of administrative lethargy, political apathy and corporate lip service to environmental concerns.