

THE NATIONAL GREEN TRIBUNAL ACT, 2010: AN OVERVIEW

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Background

It is a matter of common knowledge that the higher judiciary in India is overburdened with a large backlog of cases. It may be appreciated that in order to have effective prevention of environmental pollution environmental complaints should be decided expeditiously which is not possible in the present context of judicial administration. Therefore, there was an urgent need for an alternative forum so that environmental cases were decided without much delay. The Indian Apex Court opined that it would be desirable to have the setting up of “environmental courts on the regional basis with a professional judge and two experts drawn from the... Ecological Science Research Group.”¹ A similar view was expressed by some of the prominent jurists of the country.²

It may be noted that Principle 13 of the Rio Declaration on Development and Environment states that “states shall develop the national law regarding liability and compensation for the victims of Pollution and other environmental damage”. To give effect to the above directive and to provide for a forum for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance, the Indian Parliament enacted the National Green Tribunal Act, 2010.³

It may be appreciated that the Stockholm Declaration 1972 which has been described as International “*Magna Carta*” of our environment⁴

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1. *M.C. Mehta v. Union of India*, AIR 1987 SC 965-967.

2. Prof. Upendra Baxi has expressed the view that a single judicial forum with jurisdiction under the Environment Act and other related environmental acts over both criminal prosecutions and civil claims for violation of the laws should be established. From this forum, appeals could go to an appellate court of the status of the High Court with the facility of another appeal to the Supreme Court under Art 136 of the Indian Constitution. He was also of the opinion that victim groups and public interest groups should have access to these courts. See, U Baxi, *Environmental Protection Act: An Agenda for Implementation*, 10(1987); see also G Sadasivam Nair, *Environmental Offence: Crime Against Humanity*, in P Leelakrishnan (ed) *Law & Environment*, 186 (1992).

3. The immediate reasons that prompted the Indian Parliament to enact the Tribunals Act had been (i) the inordinate delay involved in the redressal of environment related grievances like the one involving the Bhopal Gas Leak case (*Charan Lal v Union of India* AIR 1990 SC 1480) and (ii) the inadequacy of the existing judicial system to provide adequate relief as evidenced in the Oleum Gas Leak Case (*MC Mehta v Union of India* AIR 1987 SC 965).

4. See *Essar Oil Limited v. Halar UtakarshSamithi*, MANU/SC/0037/2004 at Para 25.

and the Rio declaration, 1992 have exhorted the members of the International Community including India, to take appropriate steps for the protection and improvement of human environment. To give effect to these exhortations contained in the global declarations on environment and to provide for a specialized forum for effective and expeditious disposal of cases arising out of enforcement of environmental laws in the country, the Indian Parliament has enacted, recently,⁵ the National Green Tribunal Act, 2010 which has come into force on 2 June 2010.⁶ The Act seeks to replace the National Environment Tribunal Act, 1995⁷ and the National Environment Appellate Authority Act, 1997 which have been in operation for sometime in the country. The Act has been enacted in response to the recommendations of the Law Commission of India and the Indian Supreme Court which highlighted the large number of environment – related cases pending in the courts.⁸

The Objects of the Act

The object of the Act is to give effect to its International obligations arising out of various decisions taken at International Conferences to which India has been a Party and also to implement the Indian apex court's pronouncement that the right to healthy environment is a part of the right to life under Article 21 of the Indian Constitution. This object has been amply reflected in the preamble to the Act which says:

“(T) 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 or incidental thereto.

And whereas India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 calling upon the States to take appropriate steps for the protection and improvement of the human environment.

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5. While the Lok Sabha Cleared the Bill on 30-04-2010, the Rajya Sabha approved the same on 05-05-2010.
 6. The Act, in Section 1(2), stipulates that it shall come into force on such date as the Central Government by notification in official Gazette appoint. The Central Government has not yet issued any notification in this regard.
 7. The Environment Tribunal under this Act has not been established.
 8. See 186th Report, 2003 of the Law Commission of India. See also the decision of the Supreme Court in *M.C. Mehta v. Union of India*, (1997) 2 SCC 653, See also *M.C. Mehta v. Union of India*, AIR 1987 SC 965 and *Charanlal Sahu v. Union of India*, MANU/SC/0285/1990.

And whereas decisions were taken at the United Nations Conference on Environment and Development held at Reo de Janeiro in June, 1992 Calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.

And whereas in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution.

And whereas it is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi – disciplinary issues relating to environment”.

Salient Features of the Act

The Act seeks to establish specialized Green Tribunal⁹ with five benches located at different regions in the country. ¹⁰ 1st jurisdiction to hear a case involving environmental matters is wider than the on conferred on the National Environmental Appellate Authority which has now been replace by the new Act. The Act confers on the Green Tribunal to hear initial complaints ¹¹ as well as appeals from decisions of authorities under various environmental laws.¹² The Tribunal, when established, would not be bound to follow the procedure laid down in the Code of Civil Procedure 1973. Instead, it is allowed to follow the abstract principles of natural justice.¹³ However, the Tribunal will have the powers of a civil court under the civil procedure code.¹⁴ Its decisions are binding on the parties.¹⁵ There can be appeals to the Supreme Court against the decisions, orders or awards of the Tribunal.¹⁶ The Act also ordains that no civil court shall be allowed to entertain cases which Tribunal is competent to hear.¹⁷ The most salient feature of the Act is that the Green Tribunal is enjoined to follow the internationally recognized and nationally applied environmental principles of sustainable development, Precautionary principle and pulluter pays

9. See Sections 3 and 4 of the National Green Tribunal Act, 2010.

10. Jairam Ramesh, Union Minister of State for Environment and Forests told Rajya Sabha that the tribunals principal bench will beat Bhopal, Times of India, May 6, 2010.

11. Sections 14 and 15, the National Green Tribunal Act, 2010.

12. *Ibid*, Section 16.

13. *Id.*, Section 19 (1).

14. *Id.*, Section 19 (4).

15. *Id.*, Section 21.

16. *Id.*, Section 22.

17. *Id.*, Section 29.

Principle while issuing any order, decision or award.¹⁸ While the Act envisages the conferment of wide jurisdiction on the Green Tribunal, it also, at the same time, seeks to restrict the scope of its jurisdiction only to matters involving substantial, questions, relating environment.¹⁹ The expression a substantial question” has been defined as an instance where there is a direct violation of specific environmental obligation affecting either the community at large other than an individual or group of individuals by its environmental consequence or where the gravity of the damage to the environment or property is substantial or (iii) where the damage to public health is broadly measurable.²⁰ It is interesting to note while the right to Article 21 of the constitution is a fundamental right guaranteed to individuals, the Act seeks to deny to the same individuals and groups of individuals the right to question any environmental consequence that affects them unless it also affects the community at large or public health. However, individuals can approach the court when the damage to the environment or property is substantial. It is submitted that the definition of the expression “substantial question relating to environment “as given in the Act which provides for statutory exclusion of individuals may not stand judicial scrutiny, for, the right to healthy environment, in its wide amplitude, subsumes all aspects of environmental degradation.²¹ Again, it is doubtful whether the jurisdiction of the High Courts which are constitutional courts can be excluded either by ordinary legislation or by a constitutional amendment as their power of judicial review is a part of the basic structure of the Constitution.

The Establishment and Composition of the Tribunal

The Act empowers the Central Government to establish, by notification with effect from such date as may be specified therein, the Green Tribunal to exercise jurisdiction, powers and authority that may be conferred on such Tribunal by or under this Act.²² The Central Government is empowered to specify, by notification, the ordinary place or places of sitting of the sitting.²³ The Central Government may in consultation with the chairperson of the Tribunal, make rules for regulating the ordinary practice and procedure of the Tribunal.²⁴

18. *Id.*, Section 20.

19. *Id.*, Section 14(1).

20. *Id.*, Section 2 (1) (m).

21. *Supra*, Chapter-II of the Act.

22. Section 3, the National Green Tribunal Act, 2010.

23. *Ibid*, Section 4(3).

24. *Id.*, Section 4 (4).

The Tribunal shall consist of a full time chairperson and not a less than ten but subject to maximum of twenty full time judicial members as the Central Government may, from time to time, notify. The Tribunal shall consist of not less than ten but subject to maximum of twenty full time expert members as the Central Government may, from time to time, notify.²⁵ The Chairperson of the Tribunal has been authorized to invite one or more expert members who have specialized knowledge and experience to assist the court in a particular case before the Tribunal.²⁶

Qualification of the Members of the Tribunal

The Act stipulates that a person shall not be qualified for appointment as the Chairperson or judicial member of the Tribunal unless he is, or has been, a judge of the Supreme Court of India or Chief Justice of a High Court. However, a person who is or has been a judge of a High Court can be appointed as a judicial member.²⁷

As regards non-judicial expert members, the Act provides that no person shall be qualified for appointment as an expert member unless he (i) has a degree in Master of Science (in physical science or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen 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 institution or (ii) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.²⁸

Appointment of Members of the Tribunal

The Central Government is authorized to appoint the members of the Tribunal subject to the fulfillment of the above prescribed qualifications.²⁹ The Act states that the Chairperson of the Tribunal may be appointed by the Central Government in consultation with the Chief Justice of India.³⁰ The other members shall be appointed by the Central Government on the recommendation of such Selection Committee as may be prescribed.³¹

25. *Id.*, Section 4 (1).

26. *Id.*, Section 4 (2).

27. *Id.*, Section 5(1).

28. *Id.*, Section 5(2).

29. *Id.*, Section 6(1).

30. *Id.*, Section 6(2).

31. *Id.*, Section 6(3).

Tenure of the Office of the Members

The Chairperson, judicial members and expert members shall hold office as such for a term of five years from date on which they enter upon their office and they shall not be eligible for re-appointment. This is subject to the condition that in case a person, who is or has been a judge of the Supreme Court, has been appointed as Chairperson or judicial member of the Tribunal, he shall not hold office after he has attained the age of Seventy years. Similarly, in case a person, who is or has been the Chief Justice of a High Court, has been appointed as a Chairperson or judicial member of the Tribunal, he shall not hold office after he has attained the age of six seven years. Further, in case a person who is or has been a judge of a High Court, has been appointed as a judicial member of the Tribunal, he shall not hold office after he has attained the age of sixty seven years. In the case of expert members, the Act says, they cannot hold office after they have attained the age of sixty five years.³²

No other Office during the Tenure

The Act declares that the members of the Tribunal shall not hold any other office during their tenure as such.³³ The Act also debars them from accepting any employment, after they cease to hold office, from any person who has been a party to a proceeding before the Tribunal under the Act. However, this bar does not apply to any employment under the Central Government or a State Government or local authority or in any Statutory authority or any corporation established by or under any Central or State or Provincial Act or a Government Company as defined in Section 617 of the Companies Act, 1956.³⁴

Jurisdiction, Powers and Proceedings of the Tribunal

The Tribunal shall have jurisdiction over all cases where a substantial question relating to environment is involved³⁵ and such question arises out of the implementation of the enactments specified in Schedule-I³⁶. The Tribunal is authorized to hear all disputes arising from substantial questions

32. *Id.*, Section 7.

33. *Id.*, Section (3).

34. *Id.*, Section (4).

35. *Id.*, Section 14 (1).

36. In Schedule-I, the Acts that are mentioned are : The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act 1981; The Environment (Protection) Act, 1976. The Public Liability Insurance Act, 1991 and the Biological Diversity Act, 2002. Power is given to the Central Government under Section 34 to either to add a new Act to or delete any Act from, this by notification am ending the same.

relating environment and settle disputes and pass orders there in³⁷, provided the application for adjudication of the dispute is made within a period of six months from the date on which the cause of action for such dispute first arose. However, the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed with in a further period not exceeding sixty days³⁸. Under the Act, the Proceedings before the Tribunal shall be deemed to be judicial proceedings.³⁹

The Judicial Remedy under the Act

The Act provides for various kinds of relief.⁴⁰ It says that the Tribunal may, by an order, provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule-I to the Act, including accident occurring while handling any hazardous substance. It may also order the restitution of the property damaged and the restitution of the environment for that areas as the Tribunal may think fit.⁴¹ The relief under this Act is an addition to the relief given under the Public Liability Insurance Act, 1991.⁴² The Act seeks to discourage delayed applications for relief. It stipulates that no application for the above mentioned categories of relief would be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such relief first arose. However, the Tribunal may allow further sixty days for the application to be filed if it is satisfied that the applicant was prevented by sufficient cause from filing such application.⁴³ The Act obligates the claimants under the Act to intimate to the Tribunal about the application filed to, or as the case may be, compensation or relief received from, any other court or authority.⁴⁴ The Act provides for no fault liability in case of claims involving an accident by authorizing the Tribunal to apply the Principle of no fault.⁴⁵ The Act provides for an expeditious relief. It requires the Tribunal to deal with the applications or, as the case may be, appeals, as expeditiously as possible and obligates the Tribunal to endeavor to dispose of the application or, the case may be, an appeal finally within

37. *Supra n.35*, Section 14 (a), the National Green Tribunal Act, 2010.

38. Section 14 (3), the National Green Tribunal Act, 2010.

39. *Ibid*, Section 19(5).

40. *Id.*, Section 15.

41. *Id.*, Section 15(1).

42. *Id*, Section 15(2).

43. *Id.*, Section 15(3).

44. *Id.*, Section 15(5).

45. *Id.*, Section 17(2).

six months from the date of filing the application, or, as the case may be, the appeal, after providing the parties an opportunity to be heard.⁴⁶

Who can file an Application or an Appeal under the Act?

The Act provides that an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by —(a) any person who has sustained the injury; or (b) the owner of the property to which the damage has been caused or (c) all or any of the legal representatives of the deceased where death has resulted from the environmental damage or (d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or (e) any person aggrieved ; including any representative body or organization. In addition, the Central Government or a State Government, or a Union Territory administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local Authority or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time in force, can also move the Tribunal.⁴⁷

Miscellaneous Aspects

The decisions of the Tribunal are taken by majority of its members and they are binding on the Parties.⁴⁸ The Act declares that the orders, decisions or awards of the Tribunal shall be executable by the Tribunal as decrees of the Court. For this purpose, the Tribunal shall have powers of a Civil Court.⁴⁹

The members of the Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian penal code.⁵⁰ They are given immunity from any suit or prosecution or any other legal proceeding for anything done in good fail in pursuance of this Act.⁵¹ The Act also embodies a non-obstante clause which gives overriding effect to this Act. It says that notwithstanding anything inconsistent contained in any other law for the time in force or in any instrument having effect by virtue of any law other than this Act, the provisions of this Act shall have effect.⁵²

46. *Id.*, Section 18(3).

47. *Id.*, Section 18(2).

48. *Id.*, Section 21.

49. *Id.*, Section 25(1).

50. *Id.*, Section 31.

51. *Id.*, Section 32(2).

52. *Id.*, Section 33.

Conclusion

The National Green Tribunal is a special fast-track court for speedy disposal of environment-related civil cases. The main bench of the tribunal will be set up in Bhopal. The tribunal would have four circuit Benches. This is the first body of its kind that is required by its parent statute to apply the “polluter pays” principle and the principle of sustainable development.

The Act is considered a critical step in capacity development because the Act strengthens the framework of global environmental governance. The judiciary has been the backbone for developing a large body of environmental jurisprudence, even though policy enforcement has been weak. A National Environment Protection Authority is also to be established shortly to monitor the implementation of environment laws. However, I hope National Green Tribunal will play a lead role in environmental protection, enforcement and compliance.