Establishment of Green Tribunal in India: Ideology and Nexus with the Constitution of India

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Introduction

Environmental law in India is a study of the growth of law and jurisprudence relating to the subject environment and highlights various dimensions of the environmental regime. It inter alia examines related aspects like public nuisance and civil remedies against environmental problems. Protecting of forest habitat, conservation of natural resources and regulations of coastal zones form an important part of the study.

The problem of environmental protection is as old as the evolution of Homo Sapiens on this planet. With the development of science and technology and with the ever-increasing world population, came tremendous changes in the human environment. These changes upset the Eco-laws of nature, thereby shaking the balance of human life. It, therefore, became necessary to regulate the human behaviour and social transactions with new laws, designed to suit the changing conditions and values. In order to manage and face the countless challenges of the ever-changing environment, a new branch of law known as environmental law, emerged. There are a host of laws in India relating to the subject “Environment”. The environment (protection) Act, 1986 (EPA in short) is an umbrella legislation that granted a plethora of rules, regulation, notifications and orders and facilitated delegations of powers of central govt. to various other agencies of the centre and the states. Procedural strategies for the environmental decision making process, for example environmental impact assessment and public hearing have been evolve under the rule making power of the executive also called as delegated legislation.

Rapid expansion in industrial, infrastructure and transportation sectors as well as increasing urbanisation have put pressures on our resources available in Nature. The risk to ‘Human Health’ and ‘Environment’ has become a matter of concern. And therefore, to tackle this concern, there has been noticeable increase in environment related litigation. The Law Commission has recommended the establishing the environmental courts having both original and appellate jurisdiction relating to environmental laws. And therefore, in accordance with that it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

1.1 Significance of Study:

The Law Commission has recommended the establishing the environmental courts having both original and appellate jurisdiction relating to environmental laws. And therefore, in accordance with that it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

1 P. Leelakrishnan, Environmental Law in India, 1 Ed. 5, 2019
2 Ibid
decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

The researcher, in present article, tries to put forward existing strong connection between the ‘Constitution of India’ and the ‘Environment’. The present article provides insights to the background relating to the establishment of National Green Tribunals in India. The researcher intends to describe the working of Environmental Courts in a simplified manner.

1.2 **Research Questions:**

1) Why it was necessary to establish separate courts for adjudicating matters connected with the environment only?
2) Why environmental courts have restricted jurisdiction?
3) How the establishment of National Green Tribunal has shaped the ‘environmental perspective’ in India?

1.3 **Literature Review:**

**A. Primary Sources:**

- **Statutes:**
  - The Constitution of India, 1950
  - The Environment (Protection) Act, 1986
  - The National Green Tribunal Act, 2010
  - Code of Civil Procedure, 1908
  - Code of Criminal Procedure, 1973
  - Indian Penal Code, 1860
  - The Water (preservation and control of pollution) Act, 1974
  - The Air (preservation and control of pollution) Act, 1981

**Treaties:**

- Declaration of United Nations Conference on Human Environment (Stockholm Declaration), 16th June 1972
- World Summit on Sustainable Development, (Johannesburg), 2002

**Commentaries:**

- Durga Das Basu, Commentary on Constitution of India, 9th Ed., Vol. 5 Article 20-25

**Books:**

- P. Leelakrishnan, Environmental Law in India, (Ed. 5, 2019)

**Reports:**


**Journals:**


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4 Ibid
1.4 Objectives of Study:

To understand the importance National Green Tribunals Act, 2010
To understand the meaning of the ‘Right to Healthy Environment’
To understand the jurisdiction and the working of the environmental courts
To understand the perspective of legislature in enacting the National Green Tribunal Act, 2010

1.5 Scope and Limitations:

In the present article, researcher focuses on describing the work of Environmental Courts in India and the ideology behind constituting these courts. The researcher, in present article, tries to put forward existing strong connection between the ‘Constitution of India’ and the ‘Environment’. The present article provides insights to the background relating to the establishment of National Green Tribunals in India.
1.6 Research Methodology:

Looking at the Research Questions it can be assumed that a Doctrinal Method would be appropriate way to solve the problem and find an exact solution to the problem. Doctrinal Research is best known as traditional approach towards the problem. It is a library based research. It has been proved that this method is a systematic approach to arrive at the solution of the problem. It includes the study of various case laws; study of available literature this helps researcher to understand the background of the topic in hands and helps him to grab the important aspects from the available literature.

1.7 Summary of Chapters:

1.7.1. Chapter I – The Background:
The problem of environmental protection is as old as the evolution of Homo Sapiens in this world. With the development of science and technology and with increasing population, came terrific change in human environment. These changes disappointed the eco-laws of the nature and were regarded as the changes ‘shaking the balance of the environment’. It, therefore, become crucial to regulate the human behaviour and social transactions with new laws, enacted to tackle the changing conditions.

Keeping this view in mind, the world came together at United Nations Conference at Stockholm from 5 to 16 June 1972 to inspire and to guide the human beings for preserving and enhancing the human environment.

1.7.2. Chapter II – Nexus between the ‘Environment’ and the ‘Constitution of India’:

We saw the rapid development in science and technology and we are still inventing new things. But due to this rapid change, it is clear that we are, to some extent, neglecting the environment. Therefore, to face this challenge, Government of India has enacted plethora of laws relating to subject ‘Environment’. Environmental law has to derive its power from many other disciplines like biology, political science, ecology, etc. This interdependence of environmental law with other disciplines regards it significant branch of law. Just like other laws, law relating to environment has two principal sources, which are, common law developed by the courts through judicial decisions and the statutory law comprising of Acts, rules, notifications and alike.

Environmental law is a blend of principles, concepts and norms generated by other laws. For remedying environmental harm, concepts of civil liability, which had their origin in law of Torts, have been accepted, with modification.

Four years after the Stockholm Conference i.e. in 1976, the Forty-Second Amendment to the Constitution of India introduced significant provisions relating to the environment. Under these new provisions enshrined in the directive principles of state

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5 P. Leelakrishnan, Environmental Law in India, 1 (Ed. 5, 2019)
7 P. Leelakrishnan, Environmental Law in India, 6 (Ed. 5, 2019)
8 The Constitution (Forty – Second Amendment) Act, 1976, which came into effect from January 3rd 1977.
policy, the state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.  

1.7.3. **Chapter III – The Birth of National Green Tribunals Act, 2010:**

Rapid expansion in industrial, infrastructure and transportation sectors as well as increasing urbanisation have put pressures on our resources available in Nature. The risk to ‘Human Health’ and ‘Environment’ has become a matter of concern. And therefore, to tackle this concern, there has been noticeable increase in environment related litigation. The Law Commission has recommended the establishing the environmental courts having both original and appellate jurisdiction relating to environmental laws. And therefore, in accordance with that it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of cases relating to the environment. The Chapter III of the National Green Tribunal Act, 2010 expressly deals with the Jurisdiction, Powers, and proceedings of the tribunal. The said tribunal has ‘Original’ as well as an ‘Appellate’ jurisdiction over all civil cases where the substantial question relating to environment.

The National Green Tribunal Act, 2010 establishes the principal bench of the tribunal in the national capital of India. However, there are various regional branches in Western zone branch at Pune, Maharashtra, Central zone branch at Bhopal, Madhya Pradesh, Southern branch at Chennai, Tamil Nadu, and Eastern branch at Kolkata, West Bengal. These abovementioned have specified jurisdiction covering various states in region.

1.7.4. **Chapter IV – The Jurisdiction and the Working of Environmental Courts:**

The National Green Tribunals Act, 2010 is a remarkable piece of legislation. It is a separate Act to provides establishment of a National Green Tribunal for effective and expeditious disposal of cases relating to the environment. The National Green Tribunal Act, 2010 expressly deals with the Jurisdiction, Powers, and proceedings of the tribunal. The said tribunal has ‘Original’ as well as an ‘Appellate’ jurisdiction over all civil cases where the substantial question relating to environment.

The National Green Tribunal Act, 2010 establishes the principal bench of the tribunal in the national capital of India. However, there are various regional branches in Western zone branch at Pune, Maharashtra, Central zone branch at Bhopal, Madhya Pradesh, Southern branch at Chennai, Tamil Nadu, and Eastern branch at Kolkata, West Bengal. These abovementioned have specified jurisdiction covering various states in region.

1.7.5. **Chapter V – The Rationale:**

The National Green Tribunal Act, 2010 was established on recommendations of 186th Law Commission Report. In case of A. P. Pollution Control Board v. M. V. Nayudu the Hon’ble Supreme Court has provided that there is a need to establish the Environmental Courts which would have a benefit of expert advice from environmental scientists and technically qualified persons, as a part of judicial process. The rationale behind this was, once the Environmental Courts are established consisting one full time chairperson, not less than 10 but maximum
20 full time judicial members and not less than 10 but maximum 20 full time expert members to assist the tribunal in any specific case. And also, the chairperson has a power to appoint such person or persons having specialized knowledge and experience in particular case before the tribunal, as he may deem fit to provide assistance to the tribunal for effective disposal of cases relating to the environment.

1.7.6. **Chapter VI: Conclusion:**

Human Beings are the only species on this planet who are endowed with the intellect and an ability to provide and express their rational thinking by way of speech and actions. Subsequently, man began to use the available resources extensively thereby creating various new pollutants which viewed as a “cause” of environmental pollution. Human beings slowly started to make their own ‘man made environment’ in presence of ‘natural environment’. This man made environment adversely affected the natural environment which ultimately led to misbalance in Nature. Later, human beings began to understand the importance of natural environment and the United Nations provided a slogan called “**Only One Earth**” as the motto for United Nations Conference on Human Environment at Stockholm in 1972 and since then every nation of the world sworn to protect the environment for future generations. All governments of the world thought it fit to guide people for preservation and enhancement of environment.

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15 Sec. 4 (1) and (2), National Green Tribunal Act, 2010

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**THE BACKGROUND**

“Everything begins with an idea”

- Earl Nightingale

We are living on a planet which has everything! This planet provides and fulfils every need of human being for example – Air, Water, Land etc. every aspect of this planet is remarkable. But in meantime, it can be seen that human beings are neglecting towards this aspect. With the increase in population, increased industrial growth and infrastructures put pressure on our natural resources. The risk to human life, health and environment has become a grave matter of concern.

The problem of environment is not only a national concern, but it is an international concern too. Environment knows no political boundaries, but accepts only eco-boundaries. The Chernobyl nuclear accident in 1986 deposited radio nuclides throughout the northern hemisphere and ever since, the dominant concern of the world citizenry has been the future risks to health. Due to this, people come to know that climate being crucial to sustain the human life on earth. Therefore, people around the globe started taking initiative and started to spread awareness for protection of environment. People come to know that it is necessary to protect the environment from exploitation by individual states or corporations, and conservation of environment was considered as a part of common heritage of mankind on December 6th 1988, when United Nations
Assembly resolved\textsuperscript{19} that necessary and timely action should be taken to deal with climate change within a global framework.\textsuperscript{20}

Therefore, world united for tackling this issue of climate change. The United Nations Conference on the Human Environment, held at Stockholm in the year 1972 was a remarkable and landmark attempt by the world community regarding their concerns for deteriorating environment at the international level. This conference was a first major conference to make ‘environment’ a major issue. The participants adopted the series of principles for sound management of environment including the Stockholm Declaration and the Action Plan for the human environment and several resolutions.\textsuperscript{21}

The Stockholm declaration which contained 26 principles placed environmental issues at the forefront of international concern and marked the start of dialogue between industrialized and developing countries on the link between economic growth, pollution of the air, water and oceans and the well-being of the people around the globe. One of the most crucial aspect of this conference is the United Nations Environment Programme.\textsuperscript{22}

Principle 1 of the United Nations Conference on the Human Environment provides that, \textit{“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.”}\textsuperscript{23} The starting principle elaborates the intent of the conference. It emphasises that the capabilities of human beings to transform the natural surroundings must be wisely used, and that wrong and neglectful use of the natural resources can do huge harm to human beings and the environment.

The conference suggested that the developing countries must always try to balance their priorities with need to check the increasing population. The conference paved way to nations by enacting these 26 principles on which nations shall enact laws for protecting and improving the environment.

Twenty years later, in year 1992, the United Nations Conference on Environment and Development held at Rio De Janeiro, provided global partnership for the protection of the environment.\textsuperscript{24} This conference is also


\textsuperscript{20} P. Leelakrishnan, Environmental Law in India, 7 (Ed. 5, 2019)


\textsuperscript{22} United Nations Environment Program, UNEP - UN Environment Programme last seen on 17/12/2021


\textsuperscript{24} See, Sir Maurise Strong’s Statement at the closing meeting of the Rio Conference, Rio Declaration, 1992.
known as the ‘Earth Summit’ this conference was held on occasion of 20th Anniversary of first Human Environment Conference in Stockholm, 1972, brought together Political Leaders, Diplomats, Scientists, representatives of media and non-governmental organisations from 179 countries for a massive effort to focus on the impact of human socio-economic activities on environment.

The Rio Conference highlighted how different social, economic and environmental factors are interdependent and evolve together, and how success in one factor requires action in other factor to be sustained over time. The primary objective of the Rio ‘Earth Summit’ was to produce a broad agenda and a new blueprint for international action on environmental and development policy in 21st century. The Earth Summit concluded that the sustainable development was an attainable goal for all the people of the world regardless whether they were at local, national, regional or international level.

Ten years late, in the year 2002 at Johannesburg, the World Summit on Sustainable Development committed themselves to build a humane, equitable and a caring society. For this, world summit assumed the collective responsibility to advance and strengthen the interdependent and mutually dependant pillars of the sustainable development at local, national, regional or at international level. This summit adopted a Political Declaration and Implementation Plan which included the provisions covering a set of activities and measures to be taken in order to achieve the development that respects the environment. In doing so, this summit saw the participation of more than hundreds and thousands of government representatives, representatives of the non-governmental organizations, resulted after several days of discussions decisions that are related to water, energy, health, agriculture, biological diversity and other areas of concern.

**NEXUS BETWEEN THE ‘ENVIRONMENT’ AND THE ‘CONSTITUTION OF INDIA’**

If we take a look in the past, we can definitely see that, India has an ancient tradition and thinking ability of protecting the environment. There are various writings, Vedic texts, which prove that in ancient India every individual had to practice the Dharma to protect and worship the nature. Sun, Air, Water, Fire, and Earth are considered as manifestations of divine power and this can be seen in our Vedas, Smritis, Shrutis, and Puranas. In them, we can see that the Rishis have warned us against the deforestation and cutting of trees as they hinted that such action would result in poor rainfall. And definitely we can see their statements are totally correct in this era.

Now, coming to the modern India, we all know that the Constitution of India is a living document it needs to be amended to address the social realities and meet the demands of

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27 P. Leelakrishnan, Environmental Law in India, 9 (Ed. 5, 2019)

The need for protection of environment throws up various challenges between for a developing nation.

India is a party to the decisions taken at the United Nations Conference on Human Environment held at Stockholm in 1972 where various states provided to take appropriate steps for protection of environment and its improvement. India also participated in the Earth Summit held at Rio De Janeiro in 1992 in which states provided the effective access to judicial and administrative proceedings, including redress and remedy, to develop the National Laws regarding the liability and compensation for the victims of pollution and other environmental damage.

This Stockholm Declaration of 1972 resulted into various changes into Constitution. The 42nd amendment to the Indian Constitution in 1976, introduced principles of environmental protection in Constitution through Articles 48A and Article 51(g). Article 48A in Part IV of the Constitution which deals with the Directive Principles of State Policy and it reads as follows:

“Art. 48A: Protection and improvement of environment and safeguarding of forests and wild-life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

Article 51(g) was introduced in Part IVA of the Constitution which deals with Fundamental Duties –

“(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

Under this same amendment i.e. 42nd Amendment, Forest and Protection of Wild Animals and Birds were brought into the Concurrent List as entries 17A and 17B.

We have witnessed how ambit and scope of the Article 21 of the Constitution of India increased after the Maneka Gandhi v. Union of India case. We have seen it broadened the ambit of concepts ‘Right to life’, ‘personal liberty’, and ‘procedure established by the law’ provided in Article 21 of the Constitution of India. Hon’ble Supreme Court held that the right to life and personal liberty guaranteed under Art. 21 can be abridged only by a ‘just, fair and reasonable’ procedure established by law.

The Supreme Court of India has made huge contribution to the Environmental Jurisprudence of India. It has entertained quite a lot PILs under Art. 32 of the Constitution and same was also followed by High Courts under Art. 226. The courts have issued number of directives and directions in number of issues concerning the environment as a part of their overall writ jurisdiction. As I stated in above paragraph, India has witnessed the broadened scope of Art. 21 after Maneka Gandhi case. Hon’ble Supreme Court expanded the meaning of the word

29 Article 48A, Constitution of India
30 Article 51A, Constitution of India
31 Maneka Gandhi v. Union of India, [AIR (1978) SC 597]
32 Article 21, Constitution of India
‘Life’ in the article including ‘right to healthy environment’.

To understand this perspective more promptly, I will be providing the important judgments in this article. The very first case of considerable importance is the one in Ratlam Municipality vs. Vardhichand\textsuperscript{33} where the Supreme Court gave directions for removal of open drains and prevention of public excretion by the nearby slum dwellers. The matter came up by way of a criminal appeal. The Court relied upon Art. 47 which is in the Part IV of the Constitution relating to the Directive Principles. That Article refers to ‘improvement of public health’. In that judgment, the Supreme Court gave several directions to the Ratlam Municipality for maintenance of ‘public health’.

In Indian Council for Enviro-Legal Action v. Union of India\textsuperscript{34}, remedial action was sought for the problem that gripped the villagers of Bichhri where the chemical industries for manufacture of toxic ‘H’ acid were located. Although, the Respondents stopped producing the toxic materials, they did not abide with the orders of court in completely removing the sludge in safer place.

Foundation for applying the Precautionary Principle, the Polluter Pays Principle, and the new burden of proof was laid down by the Court in Vellore Citizens’ Welfare Forum v. Union of India\textsuperscript{35} which dealt with the pollution from tanneries. The court also referred to the concept of ‘Sustainable Development’ from the Rio Conference, 1992 and Stockholm Declaration, 1972. After referring to Articles 21, 47, 48A, and 51A (g) the court observed that remediation of the damaged environment is a part of sustainable development.

In M.C. Mehta vs. Kamal Nath\textsuperscript{36}, the Supreme Court referred to the ‘Public Trust’ doctrine and stated that it extends to natural resources such as rivers, forests, seashores, air etc. for the purpose of protecting the ecosystem. It held that by granting a lease to a motel located at the bank of the river Beas which resulted in interference by the Motel, of the natural flow of the water, the State Government had breached the above doctrine. The prior approval granted by the Government of India was quashed, the Polluter Pays Principle was applied and the public company was directed to compensate the cost of restitution of environment and ecology in the area.

In another landmark case of A. P. Pollution Control Board v. M. V. Nayudu\textsuperscript{37} Supreme Court accepted beyond doubt the proposition the Art. 21 generates the right to a healthy and hygienic environment and placed environmental concerns and human rights on same footings. And in subsequent follow-up judgment in A. P. Pollution Control Board v. M. V. Nayudu\textsuperscript{38} Supreme Court referred to serious differences in constitution of appellate authorities under plenary as well as delegated legislations with reference to Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, and provided that these authorities does not have either judicial or

\textsuperscript{33} Ratlam Municipality vs. Vardhichand [AIR (1980) SC 1622]
\textsuperscript{34} Indian Council for Enviro-Legal Action v. Union of India [AIR (1996) SC 1446]
\textsuperscript{35} Vellore Citizens’ Welfare Forum v. Union of India [(1996) 5 SCC 647]
\textsuperscript{36} M.C. Mehta vs. Kamal Nath [(1997) (1) SCC 388]
\textsuperscript{37} A. P. Pollution Control Board v. M. V. Nayudu [AIR (1999) SC 812, P. 825]
\textsuperscript{38} A. P. Pollution Control Board v. M. V. Nayudu [AIR (2001) 2 SCC 62]
environment back-up on the bench, and thereby it advised the Law Commission to examine these differences and suggest uniform structure of quasi-judicial bodies. Then, Law Commission in its 186th report, 2003 delivered a proposal to constitute the Environmental Courts.

THE BIRTH OF NATIONAL GREEN TRIBUNAL ACT, 2010

In case of A. P. Pollution Control Board v. M. V. Nayudu\(^{39}\) the Hon’ble Supreme Court has provided that there is a need to establish the Environmental Courts which would have a benefit of expert advice from environmental scientists and technically qualified persons as a part of judicial process. And in subsequent follow-up judgment in M. V. Nayudu case in 2001 the Hon’ble Supreme Court identified the differences in the 1974 Act and in the 1981 Act and opined that Law Commission must examine the differences and suggest the uniform structure for quasi-judicial bodies\(^{40}\). Then, Law Commission in its 186th report, 2003 delivered a proposal to constitute the Environmental Courts.

We know that 42nd Amendment to the Constitution of India is the effect of the Stockholm Declaration in 1972 and due to Rio Conference in 1992, various new doctrines have been formulated by the Hon’ble Supreme Court and which are – (1) Polluter Pays Principle in case of M. C. Mehta v. Union of India\(^{41}\), Indian Council for Enviro-Legal Action v. Union of India\(^{42}\), (2) Precautionary Principle in case of M. C. Mehta v. Union of India\(^{43}\) & M. C. Mehta v. Union of India\(^{44}\), (3) Public Trust Doctrine in case of M. C. Mehta v. Kamal Nath\(^{45}\) and (4) Sustainable development in case of Rural Litigation Kendra v. State of U.P.\(^{46}\) where it was found that limestone quarrying is hampering the ecological balance in Missouri. These 4 principles are significant examples of judicial innovation. These cases and various others have provided to Supreme Court and High Courts to indulge in matters concerned with environment and there felt a heed of establishing the separate forum, a specialised environmental courts in this regard. The reasons for establishing these courts are hereinafter discussed as:

Prevention of pollution and environmental damage is one side of the story but other side of the story is that country needs the development and for that we must have various power projects and industries to perform the task and therefore, the courts cannot ignore the opportunity to improve employment because there is great need of generation of revenue by way of excise duties or sales tax etc. therefore, the courts must perform the balancing task which cannot be done effectively unless court gets judicial and scientific contributions.

There are various people who file PILs against the industrialists and blackmail them regarding the same. The High Courts and Supreme Court have been doing remarkable task in that field also. Identifying the crucial issues pertaining to environment and deciding them. But they are judicial bodies, they don’t have a separate panel of

\(^{39}\) A. P. Pollution Control Board v. M. V. Nayudu, [1999] 2 SCC 718

\(^{40}\) Supra 38 at 18

\(^{41}\) M. C. Mehta v. Union of India [AIR (1986) SC 1086]

\(^{42}\) Indian Council for Enviro-Legal Action v. Union of India [AIR (1996) SC 1446]

\(^{43}\) [AIR (1997) SC 734]

\(^{44}\) [AIR (2012) 8 SCC 123]

\(^{45}\) [(1997) (1) SCC 388]

\(^{46}\) [AIR (1985) SC 652]
environment scientists who would help them and provide assistance on permanent basis. For courts, it is somewhat difficult to conduct the spot investigations to see for themselves the actual situation. Therefore, if the Environmental Courts are established in each State, the courts can make spot investigations and take oral evidence and they can also receive the scientific advice on a scientific matter by a panel of scientists.47

Although, a writ petition is filed before the High Court(s) under Art. 226 of the Constitution of India, in a personal manner or as a PIL, where there exist a question relating to the Environment or orders of the environmental authorities could be questioned; the High Court(s) may refuse to entertain the said PIL or a writ petition on a ground that there exist a separate specialist Environmental Courts and alternative remedy is available. As of now, we have Consumer Courts established under Consumer Protection Act, 1986 at District and State level. If a person approaches the High Court in writ petition under Art. 226 claiming remedy, High Courts refuse to entertain the matter because parties have remedy before the for an established under Consumer Protection Act, 1986.

There are various examples in the world level where Australia and New Zealand and other countries have established specialist environmental courts to deal the matters in connection with the environment. These courts are manned by the judges and various specialized scientists and expert commissioners. The Royal Commission of UK is of opinion that if environmental courts are established, the High Courts may refuse to entertain the applications for judicial review on ground that there exist specialized environmental courts as an effective alternative remedy. And for these abovementioned reasons Law Commission in its 186th Report proposed constituting the Environmental Courts in India.

THE JURISDICTION AND WORKING OF ENVIRONMENTAL COURTS

The main objective behind establishment of Environmental Courts in India is to provide 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 matters connected herewith.48

The National Green Tribunal Act, 2010 establishes the principal bench of the tribunal in the national capital of India. However, there are various regional branches in Western zone branch at Pune, Maharashtra, Central zone branch at Bhopal, Madhya Pradesh, Southern branch at Chennai, Tamil Nadu, and Eastern branch at Kolkata, West Bengal. These abovementioned have specified jurisdiction covering various states in region.

Section 3 of the 2010 Act provides for the Establishment of the Tribunal and read as follows:

“Sec. 3: Establishment of Tribunal: The central government shall, by notification,

47 186th Law Commission Report, Proposal to constitute Environment Courts available at Law Commission of India Law Commission Of India, PP. 21, last seen on 15/12/2021

48 The National Green Tribunal Act, 2010, available at National_Green_Tribunal_Act_2010.pdf (greentrivial.gov.in), last seen on 15/12/2021
establish with effect from such date as may be specified therein, a tribunal to be known as National Green Tribunal to exercise the jurisdiction, power and authority conferred on such Tribunal by or under this Act.”

Sec. 4 of the said Act provides the composition of the Tribunal and read as follows:

“Sec. 4: Composition of Tribunal:

(1) The Tribunal shall consist of–

(a) a full time Chairperson;
(b) not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify;
(c) not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.

(2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialized knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

(3) The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including--

(a) the rules as to the persons who shall be entitled to appear before the Tribunal;
(b) the rules as to the procedure for hearing applications and appeals and other matters [including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3)], pertaining to the applications and appeals;
(c) the minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:

Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal;
(d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.”

The Chapter III of the National Green Tribunal Act, 2010 expressly deals with the Jurisdiction, Powers, and proceedings of the tribunal. The said tribunal has ‘Original’ as well as an ‘Appellate’ jurisdiction over all civil cases where the substantial question relating to environment. Section 14 of the Act deals with Tribunal to settle disputes and read as follows:

“Sec. 14: 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

49 Section 3, The National Green Tribunal Act, 2010
50 Section 4, The National Green Tribunal Act, 2010
51 The National Green Tribunal Act, 2010, available at National_Green_Tribunal_Act__2010.pdf (greentrabul.gov.in), last seen on 15/12/2021
arises out of the implementation of the enactments specified in Schedule I.

(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.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that 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 within a further period not exceeding sixty days.  

Section 16 of the Act provides Tribunal to have an appellate jurisdiction it provides that Tribunal shall act as an appellate court to an order made on or after the commencement of this 2010 Act, by the appellate authority under section 28, 29, 33A of the Water (preservation and control of pollution) Act, 1974, and it shall also be an appellate court to an order or decision made on or after the commencement of this 2010 Act, by an appellate authority under sec. 13 of the Water (preservation and control of pollution) Cess Act, 1977. This Tribunal will also act as an appellate court to an order made, on or after the commencement of this 2010 Act, by the appellate authority under sec. 2 of the Forest (Conservation) Act, 1980.

Section 18 of the 2010 Act, deals with Application or Appeal to Tribunal, it says that each application under section 14 and 15 or an appeal under section 16 shall, be made to Tribunal in such form, contain particulars, and, be accompanied by such documents and such fess as may be prescribed.

Section 19 of the 2010 Act, deals with the procedure and powers of the Tribunal, it says that the Tribunal is bound to follow Code of Civil Procedure, 1908 but shall be guided by the Principles of Natural Justice. It further states that Tribunal shall have power to regulate its own procedure and it also lays down that Tribunal is not bound by the rules of evidence in Indian Evidence Act, 1872.

Section 22 lays down procedure for an appeal to Supreme Court. It provides that an appeal can be filed before the Supreme Court, within 90 days from the date of communication of the award, decision or order of the Tribunal.

THE RATIONALE

The Law Commission of India submitted its 186th Report for constitution of National Green Tribunal in India in 2003. The National Green Tribunal was established on October 18th, 2010. It is a statutory body established under the National Green Tribunal Act, 2010. Having its principal bench at the national capital Delhi, various other regional branches are established in Western zone, Central zone, Southern zone, and for Eastern zone.

The main objective behind establishment of Environmental Courts in India is to provide the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural

52 Section 14, The National Green Tribunal Act, 2010
53 See Sec. 16, The National Green Tribunal Act, 2010
54 See Sec. 18, The National Green Tribunal Act, 2010
55 See Sec. 19, The National Green Tribunal Act, 2010
resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and matters connected therewith.

Schedule I of the Act provides that Tribunal shall entertain all civil cases pertaining to environmental issues and the questions that are linked with list of laws included in Schedule I. Tribunal shall have power in matters relating to these laws for their effective implementation. There are various legislations like The Water (preservation and control of pollution) Act, 1974, The Water (preservation and control of pollution) Cess Act, 1977, and The Forest (Conservation) Act, 1980, The Air (preservation and control of pollution) Act, 1981, The Environment (Protection) Act, 1986, Public Liability Insurance Act, 1991, and The Biological Diversity Act, 2002. This provides that National Green Tribunal has power to entertain cases relating to these laws only. Any order or decision taken by the government can be challenged before the National Green Tribunal.

CONCLUSION

At the start of the article we have framed three research questions and now, we are at the conclusive part of the research article. Now to answer to those abovementioned research questions, first question was relating to the necessity for establishing the separate courts to deal with the matters connected with the environment only. Now, after this above discussion, the answer to this question becomes clear and it is in positive that there was a need to establish separate environmental courts to deal with the matters connected with the environment. We have seen that there was lack of scientific contributions and judicial contributions to the appellate authorities established under The Water (preservation and control of pollution) Act, 1974 & The Air (preservation and control of pollution) Act, 1981 and this was observed by the Supreme Court in M. V. Nayudu Case\textsuperscript{56} that there is a need to establish the Environmental Courts which would have a benefit of expert advice from environmental scientists and technically qualified persons, as a part of judicial process and provided the Law Commission with the task to make uniform structure for this.

Now to answer my second research question, as to why these environmental court has restricted jurisdiction. Chapter V of the National Green Tribunal Act, 2010 provides Sec. 29 Bar of Jurisdiction where it clearly states that no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.\textsuperscript{57} Now, this section to be read with Sec. 14, 16 and 18 of the Act and we get our answer to the research question in positive as these courts have been established with exclusive purpose to deal with the matters connected with the environment. If we look at the objective of the 2010 Act it is very much clear on setting out the legislative intent behind the enactment.

Now, coming towards my third research question as how establishment of National Green Tribunal has shaped ‘environmental perspective’ in India, and answer to this question is also in positive. Establishing the National Green Tribunal has provided uniformity in dealing matters connected with environment. Prior to this, people used to

\textsuperscript{56} Supra 39 at 20

\textsuperscript{57} Sec. 29, The National Green Tribunal Act, 2010
approach the ordinary civil courts by using sections 9 and 91 of the Code of Civil Procedure, 1908 to deal with public and private nuisance and criminal courts exercised their power by use of sections 268, 269, 270 and 271 of Indian Penal Code dealing with offence affecting public health, safety, convenience, decency and morals and by way of sections 425, 430, 431 dealing with the offence of mischief relating to the property. And chapter X of the Code of Criminal Procedure, 1973 provides section 133, 142, 143 and 144 where district magistrate or sub-divisional magistrate or any other executive magistrate is empowered by state government to order any person not to repeat or continue the public nuisance.

This was regarding the lower judiciary. But we cannot deny the probability that these matters connected with environment are being side-lined, in simple words, lower judiciary cannot look into these matters with that much importance and concern. But people can approach High Courts and Supreme Court under Art. 226 and 32 of the Constitution of India by way of filing a separate writ petition or a PIL in that regard.

The Water (preservation and control of pollution) Act, 1974 & The Air (preservation and control of pollution) Act, 1981 provides for constitution of Central Pollution Control Board and State Pollution Control Boards for dealing with environmental matters. The Environment (Protection) Act, 1986 is an umbrella legislation where it provides Section 3(3) which enables the Central Government to constitute an authority or authorities for the purpose of exercising and performing such of the powers and functions of the Central Government under that Act (including the power to give directions under sec. 5 of that Act) and for taking measures with respect to the matters referred to in sec. 3(2) and subject to the supervision and control of the Central Government.

But this was a bit chaos created by the government and therefore, Hon’ble Supreme Court provided that Law Commission must examine the differences and suggest a uniform structure for quasi-judicial bodies. Hence, by way of 186th Law Commission Report a proposal was made to constitute the environmental courts in India which definitely helped India to streamline the complex structure and changed the perspective towards dealing with the matters connected with environment.

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