

## National Green Tribunal upholds a fragile balance

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India is only the third country, after Australia and New Zealand, to have a dedicated environmental court with wide jurisdiction. Keeping India's spirit and commitment towards the UN Conference on the Human Environment, 1972, in Stockholm and UN Conference on Environment and Development, 1992, in Rio de Janeiro, India enacted the National Environment Tribunal Act, 1995, and established the National Green Tribunal (NGT) under the National Green Tribunal Act, 2010.

NGT replaced the National Environmental Appellate Authority, which was set up in 1997 to review administrative decisions on environmental impact assessment. Decisions of the authority could be appealed to a high court and the Supreme Court of India. To avoid this host of litigation, NGT is the forum for all civil cases that involve substantial questions related to environment, subject to appeal only to the Supreme Court.

### Specialized body

NGT is a specialized body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. Its dedicated jurisdiction includes enforcement of legal rights relating to the environment, and giving relief and compensation for damages to persons and property and restitution of ecology and environment.

Headed by a Supreme Court judge or a high court chief justice as full-time chairman, NGT consists of judicial members as well as technical expert members with practical experience in the field of environment and forests including pollution control, hazardous substance management, climate change management, environmental impact assessment, biological diversity management and forest conservation.

NGT is mandated to endeavour to dispose of cases finally within six months of filing. Though not bound by strict procedures and rules of evidence, NGT follows and is guided by the principles of natural justice. It is enjoined to follow the internationally recognized and nationally applied environmental precepts of "sustainable development", "precautionary principles" and "polluter pays principles".

### Early decisions

Initial decisions of NGT were related to a person's standing for challenging an environmental clearance. Doing away with the limitation of locus standi, NGT while adjudicating on the Nyamjang Chhu hydroelectric project held that the expressions "any person" and "aggrieved" have to be construed widely and liberally. Grievance of a person against environmental clearances may be general and not necessarily person specific. The implication of this decision is that now the onus is on the respondents to prove that the person initiating the proceedings does not have standing rather than the other way around.

The second major issue dealt with by NGT in its initial decisions was enforcing procedural compliance with the public consultation process, which is one of the most common grounds for challenges to environmental clearances. Public consultation has been held to be a form of participatory justice, giving the local people likely to be affected by a project an opportunity to raise their grievances in relation to it.

Striving for environmental democracy and more transparency, NGT recently held that merely publishing notice of securing environmental clearance for a project is not sufficient. Rather, conditions for granting environmental clearance with definitive safeguards also have to be published.

In the case of environmental clearance granted to Jindal Steel & Power for its coal mining project and pithead coal washery located in Raigarh district in the state of Chhattisgarh, NGT ordered the cancellation of the environmental clearance on the ground of gross procedural irregularities in the conduct of the public hearing.

However, an analysis of NGT decisions shows that allegations regarding the procedure undertaken for conducting public hearings are not always pivotal in determining the fate of an environmental clearance. NGT in certain cases has held that unless a procedural lapse causes obvious prejudice, an environmental clearance need not be set aside.

In the case of *Krishi Vigyan Arogya Sanstha v Ministry of Environment and Forests*, apart from deciding the case at hand, NGT also directed the Ministry of Environment and Forests to include in the terms of reference of all future thermal power projects a requirement that the project proponents submit details of the nuclear radioactivity levels of the coal proposed to be used in the project. The ministry has been directed to ask the Department of Atomic Energy to prescribe national standards for nuclear radiation in residential, industrial and ecologically sensitive areas of the country.

NGT's recent judgments show that it has successfully maintained the fragile balance between environmental concerns and the requirements of sustainable development and industrial projects. However, it has to be kept in mind that the issues before NGT are deeply interlinked with the growth impetus to which the government of India is committed.

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