Constitution of India and Environment Governance:

Administrative and Adjudicatory Process

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Lecture No 51

History and Growth of Environmental Tribunals

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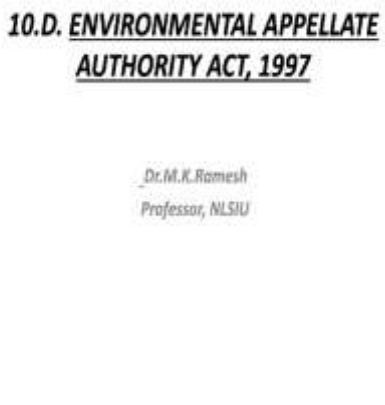

From these two efforts, the 1991 legislative effort followed by the 1995 Environmental Tribunal Effort, we get into a third major legislative enactment of the Government of India to deal with environmental problems and provide relief through an organized institutional arrangement, separate, independent of the regular court process. And that is what we will be discussing in this segment of the module on environmental justice dispensation entitled Environmental Appellate Authority Act, 1997.

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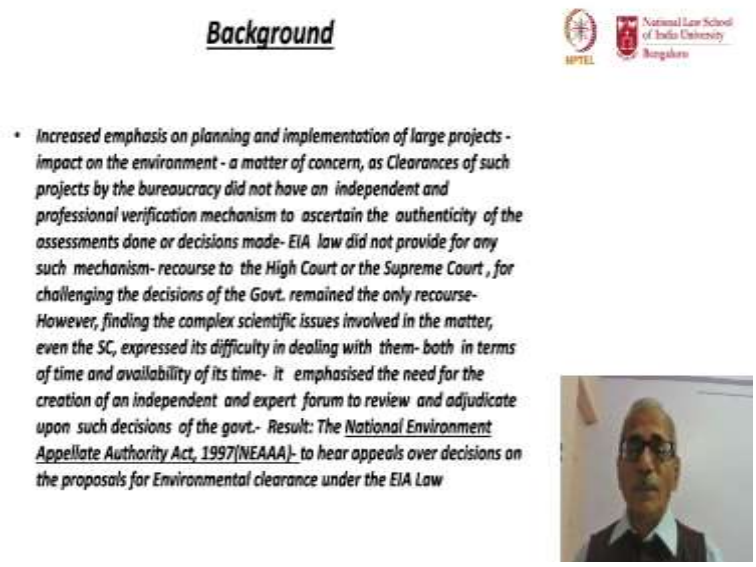

Environmental Appellate Authority Act has a wonderful background. The history behind that is a growing economy like India which was transitioning from sustenance economy to market economy. In 1990s, major developmental activities started in India and there was great stress given to planning and working of mega projects which would have major impact on the environment.

And you know very well that in 1994 the Ministry of Environment of India to provide environmental safeguards, it came up with the Environmental Impact Assessment Law, but the decision-making process about which we discussed in great detail and critiqued that law of 1994, 2006 and the latest 2020 law on impact assessment on environment, even in 1990s after the 1994 environment impact assessment law was made, there was already a lot of concern as to how environmental clearances are given, whether the processes are transparent, just in accordance with the letter and the spirit of the law and not a farcical exercise.

The decision-making is not arbitrary. There were a lot of question marks about each of these clearances and there is nothing like an independent and professional verification within the system of environment impact assessment law to aid, assist, to guide and then ensure the bureaucracy would take proper decisions. And more often than not the assessments made by the project proponent was accepted and expert consultation became just a formality and decisions as something very routine of giving clearances.

And EIA law did not have a review mechanism through any inbuilt justice delivery mechanism and if at all anybody had a grievance, anybody wanted to challenge this decision-making process under EIA, had no alternative but to go to this High Court, rather Supreme Court, the seat of justice at the higher level to challenge the decisions of government and that remained the only option.

But, even the courts of law; the High Courts and Supreme Court. See this is a very highly-highly complex issue, environment impact assessment the overall impact on the environment and environment is so vast, highly technical to understand, highly scientific to explain and the courts of all law also were finding it very difficult to really deal with these complex scientific issues involved in the matter. Even the Supreme Court expressed its difficulty and they also had the problem of time.

How much time they could make available for cases of this kind. They had so many other cases to deal with. And so, the higher judiciary emphasize the need for creation of an independent expert forum to review and adjudicate upon the environment clearance decisions of the government. And the result in 1997 the National Environment Appellate Authority Act came into existence. To do what? To hear appeals over decisions of the proposals for environmental clearance under the EIA law. So, a review, verification, appeal, followed by decision is what is contemplated under this law by an authority called as National Environment Appellate Authority.

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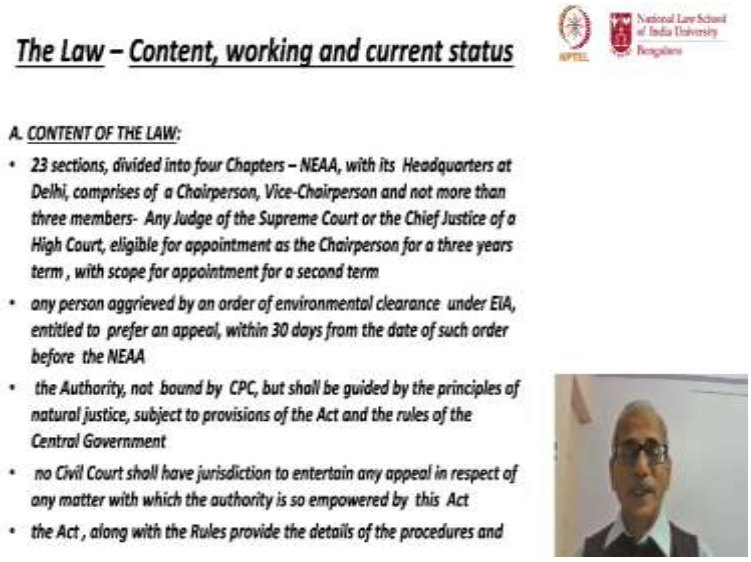

What does the law contain? 23 sections divided into 4 chapters having its headquarters at Delhi. The composition of this body NEAA National Environment Appellate Authority, it has a chairman who is a judicial person, vice chairman and not more than three members. Any judge of the Supreme Court or the chief justice of high court is eligible for appointment of the chairperson for a period of 3 years term with scope for appointment for a second term.

As far as other members including the vice chairpersons are concerned the only requirement was somebody who was knowledgeable and experienced in relation to environment, very generic qualification was fixed. The judges who would be appoint as the chairman can have no more than 3 years term, but they have scope for reappointment for a second term.

Now, who can go before this body? Any person aggrieved by an order of environmental, in relation to environmental clearance under the EIA is entitled to prefer an appeal within 30 days from the date of such an order before this authority. Like in the case of other tribunals, this authority is also not bound by the provisions of civil procedure court, but it shall be guided by the principles of natural justice subject to the provisions of the act and the rules of the central government.

So, it can lay down its own procedures but guided by the principles of natural justice which actually means that if you are going to really take action against somebody you would inform him in advance, advance notice of action. Number two, you cannot decide unilaterally by hearing only one party, you should hear both the parties, give an opportunity of being heard for all those who have a grievance, who have a response to hear both the parties and then take a call and be fair.

It is not just the question of delivering justice, but justice also, for all purposes, should although appear to have been done that is what is referred to as the principles of natural justice. So, based upon that you can evolve your own procedures as to how to deal with appeals, no civil court will have jurisdiction to entertain any appeal in respect of any matter with which this authority is empowered and has jurisdiction. So, all environment related decisions, actions over which appeals are there, appeal cannot go to any court except NEAA.

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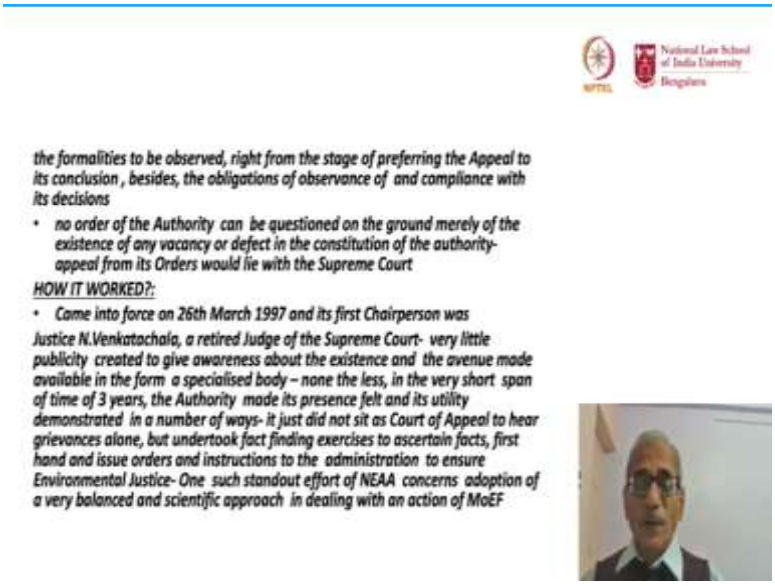

The Act along with its rules provides the kind of formalities that are to be observed at all stages of preferring the appeal to its logical conclusion and the Rules and the Act very clearly stipulate the obligations of observance and compliance of the decisions, no order of the authority can be questioned on the ground merely of existence of any vacancy or defect in the constitution of the authority.

So, what does it actually mean? It simply means that the authority is ultimate in taking a decision on appeals. Let us assume that there are some 3 members; the chairman, vice-chairman and a member. There are 3 members. But, supposing for some reason, one of the members could not attend, 2 can decide; 2 members absent and only 1 is there 1 can decide. So, there is nothing like a quorum and even if there is a vacancy and it is not filled you do not expect the entire body to meet.

So, there can be situations when a single individual left alone like last man standing, to sit, deliberate and take decisions and cannot be questioned on the ground that it is not having all the members, it is not having more than 2 members, 2 or more members these questions cannot be raised. Now, supposing I have a grievance from the decision of this Appellate Authority then your only choice is to go to the Supreme Court by way of appeal. Oh! Can I not go to the high court? No.

So, is this equal to high courts? I am not saying, but on environmental issues after this appeal is heard and decided if anybody has a problem wants to challenge this order, he has to go to

the Supreme Court. So, there it is just 2 levels of justice dispensation. The first level is justice dispensation of Appellate Authority and from which the appeal would get to the Supreme Court. How did it work or is it still working?

Well very briefly if I can narrate, it came into existence on 26th March of 1997 the first chariperson was the retired judge of the Supreme Court by name Justice N. Venkatchala, a very dynamic judge. See, at the time of making of this law not much of a publicity given to this law either by way of creation of awareness of its existence and the scope and the space that is made available under this law in the form of a specialized body for rendering justice in a very highly professional and skilled way.

In spite of that in a very short period of time of 3 years when Justice Venkatachala was the chairman, the authoriy made its presence felt in a huge way and it demonstrated its value and significance in a variety of ways, it just did not sit in the headquarters Delhi as just a court of appeal, it was not just confined to the 4 walls of the court-house to hear appeals and redress grievances to find out facts, to ascertain and verify whether what is being claimed, what is being asserted in this body is true or not, to check and verify whether the documents submitted were really genuine or not.

This is one body. It is a very refreshing departure from the usual kind of a justice dispensation mechanism we have. It, itself went to the site of contention, the Appellate Authority went into fact-finding missions to ascertain facts first-hand and after convincing itself of the authenticity, genuineness and validity of the claims made by putting all that they had including their field excercise of finding facts it would issue instructions to the administration to ensure environmental justice, a real novelty.

High court and Supreme Court do not go to a field trial, field exercise, they may appoint an expert to go, but this is the body which was physically present in many places just to make sure what has been made available on paper whatever that has been argued before it is verifiable and they would ascertain for themselves about the authenticity of such claims and such submissions.

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One of the stand-out efforts, let me recall it, concerns a very-very ecologically fragile area. There is a national park very close to the coast in the state of Odisha called the Bhitarkanika National Park and this was a decision in relation to that the environment ministry took for facilitating a major developmental activity close to this Bhitarkanika National Park. It went on a fact-finding spree, it interviewed so many people, concerned with this activity and the action of the part of the government, consulted the local communities, it actually went to the site.

And on the basis of all that they were able to cull out. The orders of the Appellate Body are a real model of a judgement, a wonderful balance between demands of development and imperatives of environment and they made it very clear by insisting on the need for putting in place a number of safeguard measures before allowing the developmental activity to take off. It was a great effort, the finest show and the professionalism displayed by the authority, by this lordship in environmental adjudicatory process, a rare master stroke that showed, that the environmental justice dispensation in India was coming of age, maturing with all the expertise that is required, with all the skill that is required to render environmental justice.

So, and I am referring to the period between 1997 to 2000 what happened thereafter, in the year 2000 Justice Venkatachala finished his term as the chairman, he later actually went as the Lokayukta of Karnataka. Suddenly there was a vacancy, vacancy of chairmanship. The vacancy was never filled up despite the fact that this issue was raised in Supreme Court and

the Supreme Court insisted the government to initiate measures that nothing happened for 10 long years there was no chairman.

Then what happened for nearly 5 years? The authority functioned with a vice-chairman and member. This body without the head had superannuated members of the bureaucracy occupying the position of vice-chair. And the members were very weak as to get influenced by whatever the vice-chairman conveyed, because he had retired as the secretariat to the Department of Environment and Ministry.

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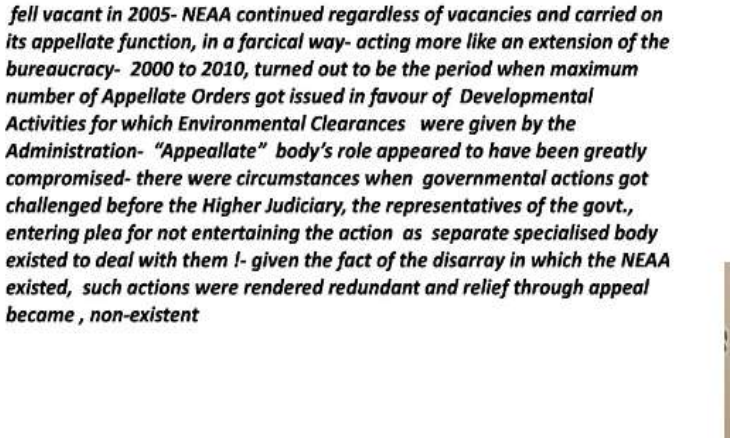

In 2005 even the position of the vice-chairman became vacant because, his term also was over. But what happened to the Environment Appellate Authority? Wonder of wonders, it continued to operate, regardless of vacancies it took advantage of no quorum rule and carried on its appellate function. In a farcical manner. It acted more like an extension of the Environment Ministry's EIA clearance mechanism.

2000 to 2010 turned out to be the period when maximum number of appellate orders got issued in favor of development activities for which environmental clearances were given by the administration. Appellate Body's role appeared to have been greatly compromised, there were circumstances when the very governmental actions of giving environmental clearance were challenged before the higher judiciary.

Because, this is a headless body and there is no, like no full house or even filling of vacancies and so people took recourse to the higher judiciary for relief, either high court or the Supreme

Court and there an instances in such cases the representatives of the government appearing before the court entering a plea that "Look your lordship there is already an appellate court in existence, an Appellate Authority in existence, this matter should go there and not trouble the higher judiciary whose time is very precious".

And higher judiciary would relent and allow that case to lapse with the expectation that the Appellate Authority would be approached and even if somebody approached the Appellate Body after that, the state of affairs was such that nothing would come out of it by way of justice. So, everything became a sham exercise given the fact of the disarray in which the environment Appellate Authority existed such actions were rendered, redundant and relief through appeal became non-existent.

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Then what happened? In 2010, The National Green Tribunal Act was passed, both the National Environment Authority, Appellate Authority as we are seeing now, the 1997 one, and the National Environment Tribunal, (National Environment Tribunal), you remember it was created under the 1995 Act, they became extinct. They got consigned to history as the laws that created them got repealed by this new law. As a matter of fact, the environment Appellate Authority began it is meanings with a great promise and he ended with a whimper but it was not all lost.

Because, it provided the blueprint of a professional and scientifically equipped adjudicatory body to adjudicate on environmental problems through NGT and that is the subject that we

will start and discuss in the next module, the second part of environment justice dispensation in which we will elaborately discuss the current environment, environmental justice dispensation mechanism, that is in a operation since 2010 very elaborately, and then we also look to what is the space within administration as to how to deal with environmental issues even without going to the court of law.