

Constitution of India and Environment Governance:

Administrative and Adjudicatory Process

Doctor M.K. Ramesh

Professor of Law

National Law School of India University

Lecture No 53

National Green Tribunal-II

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II. PERFORMANCE AUDIT



A DECADAL EXPERIENCE OF A SPECIALISED BODY FOR ACCESSING AND SECURING JUSTICE CONCERNING ENVIRONMENT. ABOUT 3500 + DECISIONS AND ORDERS- THESE CAN BE ANALYSED FROM A SET OF MARKERS LIKE, responsiveness to environmental problems; knowledge and expertise of judges and members; facilitation of access to justice; their status, authority and level of independence; their access to scientific and technical expertise; ability to operate as a multi-door courthouse; expeditiousness and economically viable recourse for resolution of disputes; flexibility, innovativeness and value-adding functions to the existing statutory remedies; contribution to the development of environmental jurisprudence; consequential impressions and impacts on the concerned and their responses by way of their approaches, attitudes and actions



So, it is very elaborate and meticulously planned law to bring into existence something which is very special taking all kinds of precautions to ensure this particular outfit would really approximate to the ideas that the higher judiciary had visualized and would deliver. So, there is a lot of promise, there is lot of promise that from those amateurish efforts that we had earlier which had a very tortuous part of evolution and then its demise, this would stay and this the need of the hour.

Instead of looking specific cases decided by the NGT because, the volume of cases dealt and decided is humongous as you would be seen at in just about in years 10 years of its life a kind of work that has been done by NGT is something which is unimaginable and so instead of going case by case the idea is to consolidate in one place a set of outcomes of its consideration of cases and in this particular part what will be done is to consolidate them in about some 20 to 25 instances of cases and case laws especially outcome of those to really carry out what can be describe as an assessment and an evaluation of the work of National Green Tribunal.

So, while giving little bit of a peek into what it has been doing you are also looking into an evaluation of its work, a performance audit. A decadal experience of a specialized body for accessing and securing justice on all matters concerning the environment what we have before us or not less than about 3500 orders, decisions and orders in terms of volume this is mind-boggling and how do you really make an assessment you need a set of criteria as to how you going to really, how useful, how valuable, how beneficial, how effective, how desirable, the working of this National Green Tribunal and for that a few markers can be listed out just as below.

Number 1, its responsiveness to environmental problems. How responsive it has been, the knowledge and expertise of knowledge judges and members, facilitation of access to justice, fourthly its status authority and level of independence in conducting proceedings, in delivering judgments, acting without fear or favour, fourthly its access to scientific and technical expertise, fifth ability to operate as a multi-door court-house.

Sixth, expeditiousness and economically viable recourse for resolution of disputes, seventh flexibility, innovativeness and value-adding functions to the existing statutory remedies and eighth, contribution to the development of environmental jurisprudence. These are some of the 8 indicative factors which may perhaps help us in doing a bit of an evaluation of the work of this body of the host of 3000 orders, 4000 orders cases decided by it.

But, in addition, it is also very necessary that it is not just these that would actually skier our thinking, our assessment, and our judgment, our performance of this when it also should include the consequential impressions and the impacts of the host of instructions, orders, judgments, actions taken by NGT in the course of any case that it had taken up on the concerned and their responses by way of their approaches, attitudes and actions.

Here I mean how have the courts have taken its decisions, how have the administration to whom these are directed have been sensitive to their decisions, how have that very corporate entities against whom certain stricture and orders are passed have responded and complied and how have me, you and every member of the civil society have reacted to the orders of that. These are also indicative and helpful for us to draw a conclusion as to whether it is a

good entity, something that is useful it should continue, it is doing great work, make it continue or it is a vital effect.

So, how do you decide of that further I just put together a set of indicators to deciding determine its utility value and worth and other basis of this we will examine maybe about a couple of dozens of instances, orders, directions, judgments, decisions given by NGT.

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ACCOMPLISHMENTS :

- *10 years, since establishment and around 3500 judgments and orders, covering a whole range of issues concerning, Industrial Operations, Natural resource management, Mining Operations, Water, Air, Noise quality issues, Waste management, Environmental Compensations, etc.*
- *has emerged as a critical player in environmental regulation, passing strict orders on issues ranging from pollution - to deforestation- to waste management and the like.*
- *Has offered a path for the evolution of environmental jurisprudence by setting up an alternative dispute resolution mechanism.*
- *Real help in reducing the burden of litigation in the higher courts on environmental matters.*
- *Less formal, less expensive, and a faster way of resolving environment related disputes.*



Let us first have a panoramic view or the accomplishments of NGT. Number one, 10 years since its establishment over 3500 judgments and orders, covering a whole range of issues look at the issues covered by its industrial operations, natural resource management, mining operations, water, air, noise quality issues, waste management, environmental compensations, such a range.

Number two, it has emerged as a critical player in environmental regulation by passing very-very strict orders on issues ranging from pollution to deforestation to waste management and the like, the sweep to vast. Number three, it has offered a path almost a highway for the evolution of environmental jurisprudence by setting up an alternative dispute resolution forum, fourth, a real help in reducing the burden of litigation in the higher courts on environmental matters, fifth in terms of its procedures it has been less formal, less expensive and a faster way of resolving environment related disputes.

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- *Has, so far, played a crucial role in curbing environment-damaging activities;*
- *Instrumental in ensuring that the Environment Impact Assessment process is strictly observed, by all the concerned*
- *Has not only flagged key environmental issues of the country but, brought a new dynamic functioning style for sensitising government machinery to act fast and intensify its surveillance and vigilance mechanism.*
- *Recently, it dispensed the process of referring complaints and petitions filed before it for seeking para-wise comments and adjourning matters on many dates due to not receiving complete response of notices; it launched online filing of complaints and petitions on payment of a fee of ₹1,000 without engaging an advocate; also entertained mails and letters received by it, admitting them petitions*
- *Playing a pivotal role in expeditious disposal of cases, the NGT has constituted committees of Central and state representatives with experts from IITs and other eminent institutions. In selected matters, it preferred appointment of retired judges of the Supreme Court and High Courts for taking stock of situation and establishing inter-departmental coordination in states.*



Sixth, till now it has played a very crucial role in curbing environmentally damaging activities, seventh it is instrumental in ensuring that environment impact assessment process is strictly observed by all the concerned, eight it has not only flagged key environmental issues of the country but, brought a new dynamic functioning style for sensitizing government machinery to act fast and intensify its surveillance and vigilance mechanisms.

To give an illustrative example, it has actually dispensed with the process in recent times of referring complaints and petitions filed before it for seeking para-wise comments from different departments of the government you know the procedure normally when actions are initiated before NGT on various issues NGT would refer that matter to different government agencies.

Look this is the complaint, this is the grievance, what is your response to it, give us para-wise comments on each addressing, on each on these issues and on the basis which we will be able to make out as to what is the grievance, what is the action and what is needed to be done. This is what they used to do I think for 6-7 years they were doing this as it so turned out that it became a time-consuming exercise and second, through this particular process even the governmental and other agencies to whom these references were made took their own speed time and responding, providing information and it caused delays. I am not saying deliberate delays.

But, I am saying delays on account of the procedure adopted and followed you know that this is very dynamic body what procedure it lays down now it can change to suit the occasion and that is what it did instead of doing this kind of an exercise and getting complete responses to the notices issued what it did was it launched an online filing of complaints and petitions on payment of a fee of 1000 rupees even without engaging an advocate.

Off-course this has been a matter of great debate in law practice circles but, I am only looking at the positive side. The negative side we will examine later on. The positive side see you have to engage an advocate, the advocate has to put together arguments and these issues that have been tabled before the NGT would be referred to different departments of the government for their responses, would be refer to different corporate entities for the responses and you have to make for a long period of time.

But, suppose in the complaint is going to be filed online, instantaneous. I have a complaint and the next moment it is already on the table of the NGT, NGT would go through it and all that would do is it would immediately refer to the different agencies it would instantaneously decide in its meeting but there is a kind of thing and these are the issues and these are the departments, these are the corporate entities which we need to respond

So, through mails, a particular point of time is fixed for each one of them to respond. They started entertaining mails and letters received by it admitting them as petitions the ostensible idea is to dispense with the rigmarole procedures involved in seeking and securing information responses, reactions, actions, et cetera and achieve them at shortest possible period of time this is definitely an innovation.

To mention few other efforts of NGT which can be considered as major achievements of NGT, it played and still is playing a pivotal role in expeditious disposal of cases by constituting committees of central and state representatives with experts drawn from very renowned technological institutions and eminent institutions.

In selected matters, it preferred appointment of retired judges of the Supreme Court and high court for taking stock of situation and establishing inter-departmental coordination among states. On paper this looks like just yet another innovative measure but to understand the value and significance of it, a little elaboration is required.

NGT with all the expertise it has, when cases come before it involving very complex environmental issues even the expertise and the legal skills that are there in the particular body it not be adequate and so you need infusion of expertise in very verified field of knowledge, skill, understanding and research and so you need to reach out to those who do have that kind of information, skill, knowledge tap that and utilize them and so in order that NGT time is saved these expert bodies are constituted to aid, assist, guide and advice NGT.

Actually, this is a technique adopted by the high court and supreme court. The same thing NGT has also adopted because its work had become so voluminous and each of the members devoting time and energy for each of these issues getting deeper into each of these specialized areas started becoming very difficult and time is a patience and if you want to save time you need out to bring in more people and expert advice is something that we saw.

The other thing that you must note is establishment of departmental coordination among different agencies of state. All throughout our study of environmental law, we have found that this is very serious problem, the problem of coordination, the problem of the one department of government working in tandem with the other department of other government. Time again already noticed and we have mentioned in our course of discussion that environment is not something which would operate in silos or compartments the land, the air, the water, they have a kind of symmetry in them.

They work in one rhythm. The divisions that you have for different departments of the government or only for administrative convenience but, they need have it to evolve means and mechanism of working together to be in tune with that natural rhythm to make their performance not in any way conflicting with each other's functioning but as a symphony.

So far, in the working of environmental laws or any of that, that kind of symphony was never generated. NGT took steps in bringing secretaries and heads of departments of different agencies of state to come together in a coordination committee then a particular problem came the NGT would constitute this body and would as them deliberate and then give us your opinion so that we can pass it as an order. A real, great innovation, a much-needed requirement accomplished by NGT.

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- *The National Green Tribunal strove to play an effective role in resolving environmental disputes in 2019 with cleaning of Ganga and Yamuna taking centre stage as the panel highlighted the urgency of the matter saying "every drop of pollution in Ganga is a matter of concern". Expressing dissatisfaction over cleaning of Yamuna, it directed Delhi, Haryana and Uttar Pradesh governments to submit a performance guarantee of ₹10 crore each - It directed Uttarakhand and UP pollution control boards to publicise Ganga's water quality at strategic locations every month and indicate if it is fit for bathing and drinking. It asked Uttarakhand to ensure no illegal camping takes place on the banks of Ganga and its tributaries*
- *slapped a ₹100 crore fine on the Tamil Nadu government over inordinate delay in removal of encroachments along and prevention of demineralised water pollution in Adyar and Cooum rivers in Chennai*
- *On rising forest fire incidents, it directed the Central Ministry, to submit data related to such occurrences in the last five years and identification of hotspots.*



The Tribunal played a very great role. I am just referring to the familiar, recent one just in the last year 2019 and you must have read in the newspapers and also would have even today you are getting information about that, that is about the cleaning of Ganga and Yamuna and this is largely due to a particular panel that was created within the National Green Tribunal which took a lot of effort to highlight the urgency the matter and to quote from one of its observations.

Every drop of pollution in Ganga is a matter of great concern and what did NGT do in consideration of this particular issue? It has expressed dissatisfaction over all that was done in cleaning the river Yamuna and it directed Delhi, Haryana and Uttar Pradesh governments to submit a performance guarantee. You must note here, a performance guarantee of 10 crores each. See, we have given you directions clean-up this river and make it get restore to its earlier condition or at least something which is manageable condition and where not doing it we have expected you to and so we lay down a requirement from you. Give us a performance guarantee of 10 crores, each one of states. It is the directions to the states.

So, making governments accountable for commission patience and almost imposing a kind of penalty you give this guarantee then only we will rest assured. It directed Uttarakhand and UP pollution control boards to publicize Ganga's water quality at strategic locations every month so, how monitoring has to be done, how quality control need have to be established is encapsulated in this idea and publicize Ganga's water quality at strategic locations every month and the objective is to indicate the extent of it being fit for bathing and drinking.

Look at another order it instructed Uttarakhand to ensure no illegal camping takes place on the banks of the river Ganga and its tributaries and this happened last year again. It slapped a 100 crore rupee fine, not on individual or a private entity, on Tamil Nadu government. What was the problem? It was about the inordinate delay in removing encroachments where the rivers Adyar and Cooum had this problem of encroachments and instructions were given to them that these encroachments are causing pollution to the river Adyar and Cooum and the government was required to remove encroachments with a particular period of time.

And the government failed to conform to these orders and look the result the government could not get away with his delay, could not get away with whatever kind lame explanations it gave according to NGT it is not defined. But now there is a failure this is what you have to pay up, pay up for your delays, laxity in your performance and non-observance of our instruction to our satisfaction. Another incident which caught the eye of NGT concerned forest fires and these were on the increase over a period of time and it felt that dealing each one of these cases it not be sufficient what it did was.

It directed the Ministry of Environment Forest and Climate Change to do your study of all that and come-up with the report of all information of such occurrences in the last 5 years and identify why they are recurring and why they are recurring with increasing frequency and what are those trouble spots which need urgent, quick action and the measures that need have to be taken. A very detailed report was require to be submitted by the ministry to NGT.

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- *an important Order passed by NGT concerns, regulation of use of RO purifiers, by directing the government to prohibit them where total dissolved solids in water were below 500 mg per litre and sensitise public, in that regard*
- *The NGT dealt with matters of air pollution in 122 cities where its level has been exceeding norms. It got action plans approved by the Central Pollution Control Board (CPCB) for such cities to be implemented by state agencies.*
- *Its presence was felt even in far off areas like Lakshadweep where it asked the administration to ensure supply of potable water to villages and implement the action plan suggested by the Central Ground Water Board in this regard.*
- *It directed setting up of mechanisms to inform public on 'severe' condition days of air pollution and issue 'advisories' for taking precautionary measures*
- *Acting tough on pollution caused by cars, it slapped a ₹500 crore fine on German auto major Volkswagen for damaging the environment through "cheat device" in its diesel cars in India*



So, it is actually galvanizing the highest authority concerning environment to ensure that there is some performance on the part of administration and a better accounting of their actions by themselves. There is another important order passed by NGT and this concerns regulation of use of RO purifiers. You know that in the market you have water called as RO purifiers or purifiers which adopt this technology called as reverse osmosis and this became very rampant thing as to whether this is answer for clean water and there were scientific evidences that were made available that this is not really a solution for drinking water and so a bit of scientific study that helped the NGT to direct the government to prohibit such purifiers where total dissolved solids in water were below 500 milligrams per litre.

Because, you do not require such purifiers in such cases and it is unnecessary waste of expenditure and people should be sensitized through this and this regard. Look at another instance, serious problems of air pollution which is a pain in all major cities in India. And what did NGT do it dealt with matters of air pollution in 122 cities. Not one, two, 122, where the air pollution levels have been exceeding norms it directed the Central Pollution Control Board look what are you doing? Get into action prepare action plans and these action plans is so prepared you ensure that you do a minute scrutiny in them and approve them for such cities and get them implemented by state agencies.

So, it was actually direction to the state agencies to prepare plans and then get it verified, tested, checked and with expert hand of the Central Pollution Control Board approved and these state agencies to take back those approved plans and put them into applications. Just in one stroke so many things were achieved by NGT.

So, in terms of the fact of approach of not just being a micro-managing environmental problem issue it took on Goliaths. 122 cities is not a joke. Look at another one. Its presence was felt even in far off areas like Lakshadweep. Lakshadweep you know it is an archipelago where there is a problem of drinking water and this is not a problem that arose today. It has been there way back in 1980s. There have been decisions delivered by the high court and the supreme court and one important case that comes to mind is a case of Attakoya Thangal.

Attakoya Thangal. In that case the courts have actually ordered for the government to do and take such adequate measures to ensure that drinking water problem of the people there are

solved. It is a t basic necessity and this was in 1980's and 90's were high court and Supreme Court were involved in it the year is 2018-19 NGT found that not much was done.

So, what it will do it asked the administration to ensure supply of potable water to villages and implement the action plan which was made available to it by the central ground water board in this regard quite some time back there is already a plan, there is already step by step implementation of it, already on paper translated to actions do not allow it to hibernate.

So, NGT meant business here. No delays. This is a basic necessity and you cannot procrastinate or delay. Budgetary constraints or whatever should not come in the way look at the visionary approach here in another instance it directed setting up of mechanisms to inform public on severe condition days of air pollution and issue advisories for taking precautionary measures. So, when we talk of weather forecast, we only talk about whether it would rain, or it would be severe heat anything like that.

But, one more dimension was added that at some point of time in the day in the week, in a particular season, in a particular locality the air pollution levels are going to be high. Scientific fact and if this is scientific fact then the authority is need have to have a very clear duty to inform public as to the kind of precautions that they have to take during that critical period so that health of protected really a visionary approach and this is an icing to the cake.

Here was a multi-national automobile manufacturing giant. Look at the order passed here. I think from the decision itself you will make out what the facts. It acted tough on pollution caused by cars and it slapped a 500-crore rupee fine, not few thousands or lakhs, 500 crore rupees fine on this German auto giant, Volkswagen. For what? For damaging the environment how did it damage through a cheat device in its diesel cars in India.

Diesel cars after Bharat 1, 2, 3, 4 the standards stipulated need them to have filters so that from the exhaust the polluting substance will not get released and what did this company do it inserted a device in its cars which are diesel cars to say that this is safe and it is sufficient to ensure that the level of pollution would not be beyond limit prescribed. That was actually a lie to make the corporate entity accountable for its actions of misleading people somebody had to act of and that was NGT here.

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- *it appointed a committee headed by a former Delhi High Court judge to deal with nearly 52,000 industrial units which are operating illegally in Delhi's residential areas*
- *It directed the Railways to identify and develop at least 36 stations as "eco-smart stations" and asked it to maintain cleanliness on platforms and ensure liability of officers for non compliance*
- *NGT, enquired. Punjab, Haryana and UP govts. about their plans on tackling the problem of crop residue burning, a major contributor to air pollution in Delhi- directed constitution of special cells in the office of Chief secretary of Delhi and neighbouring states to monitor air pollution*
- *On solid waste management, it asked the Delhi government and civic bodies to deposit ₹250 crore in an escrow account to facilitate waste removal from landfill sites - in an unprecedented move, the NGT summoned chief secretaries of states and UTs seeking compliance status on key issues like solid and plastic waste, polluted river stretches, sand mining and air pollution in cities.*



So, it did not spare a multi-national giant also, very rare, one of those rare occasions where corporate responsibility was very clearly established and action taken. Some more instances just to demonstrate the kind of work done by the National Green Tribunal which is unprecedented in any legal system by any environmental court, by anywhere in the world.

Appointed a committee headed by a former Delhi high court judge about what to deal with. How many? 52000 industrial units which were operating illegally in Delhi's residential areas. Look at that. How do you get license? How somebody would allow somebody to operate even without license? What about the health, hygiene and well-being of people? What are the authorities doing NGT said we cannot keep quiet we constitute high power committee to look into this problem and then report for actions for us to be implemented by the authorities without for the delay.

It did not spare the railway department. In another instance it insisted the railway department to identify and develop what at least 36 railway stations as eco-smart stations and asked it to maintain cleanliness on platforms and ensure liability of officers for non-compliance. NGT made enquires with Punjab, Haryana and UP governments in another instance as to what are their plans in tackling, I think you are familiar with this, this is happening year after year.

The problem of crop residue burning, what we call it stubble burning which is major contributor to air pollution in Delhi and air pollution in Delhi is actually contributed by what happens in its liber hood. Delhi is kind of a very interesting city ecologically its topography is such that its stands on a kind of platform which is surrounded by elevated areas or hilly areas and so whatever happens in the elevated areas will come in settled down valley, valley kind of situation, a turf kind of situation that Delhi is in so there is entry of polluting substance no exit.

So, Delhi area get choked there is pollution in the neighbourhood and what did NGT do it summoned the authorities in the neighbouring states bordering Delhi. What you have done about this crop residue burning? And it directed constitution of special cells in the office of chief secretary of Delhi and in each of these neighbouring states to monitor air pollution and take action. ITs work on solid waste management is another phenomenal work.

On solid waste management, it asked the Delhi government and civic bodies please follow this carefully and underline this, to deposit 250 crore in an escrow account. For what? To facilitate waste removal from landfill sites money should be available in an escrow account so that this work would be carried out without any hindrance or difficulty want of funds an unprecedented move more unprecedented move comes now. NGT summoned chief secretaries of states and union territories demanding complains status on key issues like solid and plastic waste, polluted river stretches, sand mining and air pollution in cities

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- Expressing dissatisfaction over action taken by the Delhi government against unauthorised industrial activities, the NGT asked it to deposit ₹25 crore with the CPCB for failure to curb pollution
 - Recently, a 16-year-old boy approached the NGT to stop e-commerce giants Amazon and Flipkart from excessive plastic use in packaging, prompting it to direct the CPCB to submit a report
 - It also ordered formulation of environmental management plans for ecologically sensitive areas like Kullu-Manali, McLeodganj, Mahabaleshwar, Vaishno Devi and Rohtang Pass
 - The NGT dealt with rejuvenation of 351 polluted river stretches- Restitution of environment in Sonebhadra and Singrauli areas which were affected by thermal power plants and mining, and of degraded areas in Meghalaya affected by rat hole mining - these were some of the major issues dealt in 2019 by the Tribunal
- IN DEED, A VERY IMPRESSIVE RECORD OF ACHIEVEMENTS, THAT TOO, IN A VERY SHORT SPAN OF LIFE OF JUST A DECADE



I have referred to the host of other instances as well. From the slides that you able to make out how unauthorized industrial activities were not properly dealt with by the New Delhi government and for the failures of the government demanding government to deposit 25 crore of rupees before CPCB for failure like a fine imposed.

Or even an young boy of 16 years old when he approached to NGT for what to stop e-commerce giants. We have online transactions occurring in a very big way now and you know the packaging material that these commercial giants, e-commerce giants like amazon and flipkart, the packing material is so much. What you do with the package material when it is actually taken for consumption. What you do with package? Something need have to be done and for that CPCB was asked to prepare report and submitted to NGT for further instruction to these corporate giants.

There are quite of few ecologically sensitive areas and some more rather not much has been done or whatever it has to be done administration is inadequate to take care of these ecological fragile areas like Kullu-Manali, Mc Leodganj, Mahabaleshwar, Vaishno Devi and Rohtang Pass year after year they have one ecological problem or the other floods or landslides or even problems of encroachments illegal encroachments. So, environmental management plans for these are must because these are very sensitive areas and so to the concerned authority departments a environmental management plan was require to be formulated as per the instructions of NGT.

NGT is attention come towards the curviest rivers of India especially certain river stretches which are rendered untermiated on account of one of the major contributors thermal powerplants and coal mining these have contributed to a lot of pollution of a number of rivers and especially with regard to Sonebhadra and Singrauli areas for the restitution of environment and for rejuvenation of 351 polluted river stretches and for degraded areas an account of mining in Meghalaya there is something called as rat hole mining it is a mechanism and as a result of which outwardly you would not see much of change.

But, the integrity of that particular ecosystem would be so fragile, so affected that any time major mishaps may occur. So, for the restitution of that eco-system there and for the rejuvenation of rivers or a number of issues the NGT took monumental decisions and gave directions for actions. I can go on with any number of examples but I think this is as

sufficient slice of information of the dimensions and the depths of action and measures taken by the National Green Tribunal very impressive record of achievements and that too in very short span of time of life of just a decade by the body.

Nowhere in the world these kinds of actions were initiated and acted upon by just about a dozen people sitting in the headquarters at Delhi and its four benches in different parts of India. What high court and supreme court found it impossible very difficult impact upon NGT was able to achieve. So, in term of it is actually meant truly, really mind-blogging.