



Assessment of working of National Green Tribunal

With special reference to the cases from Gujarat and Western Region Bench of Pune

Gujarat Social Watch

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Abbreviations:

CPCB-Central Pollution Control Board

CRZ-Coastal Regulation Zone

DD-Demand Draft

EAC-Expert Appraisal Committee

EC-Environmental Clearance

EIA-Environmental Impact Assessment

EPH-Environmental Public Hearing

GPCB- Gujarat State Pollution Control Board

GSW-Gujarat Social Watch

HC-High Court

IPO-Indian Postal Order

MoEF-Ministry of Environment and Forest

MSW-Municipal Solid Waste

NGO-Non-governmental Organization

NGT-National Green Tribunal

NSWC-National Social Watch Coalition

NSW-National Social Watch

PIL-Public Interest Litigation

PIO-Public Information officer,

RMC-Rajkot Municipal Corporation

RTI-Right to information

SEIAA- State Level Environment Impact Assessment Authority

SEZ-Special economic Zone

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Hope this document will be useful for all.

Mahesh Pandya

Co-ordinator, Gujarat Social Watch

Preface

The Supreme Court observed that environmental cases involve assessment of scientific data and thus environmental courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. After years of deliberation, the National Green Tribunal Bill was introduced in the Indian Parliament on July 29, 2009. The bill provides for the establishment of a Green Tribunal, which will offer effective and fast redressal of cases related to environmental protection and conservation of natural resources and forests. Thus, National Green Tribunal was established on 18th October 2010 under the National Green Tribunal Act 2010. National Green Tribunal is thus a new beginning for India's struggle between development and environment. NGT is a significant initiative by the Government and the rightful implementation of the law would certainly usher the country towards the path of Sustainable Development. But the important question is will the NGT in current format serve the purpose it's meant to be?

National Social Watch (NSW), which is the national secretariat of National Social Watch Coalition (NSWC), works with the basic methodology to make governments accountable for their commitments. It brings out its research in the form of annual citizens' report, perspective papers, focus papers and research briefs. NSW supports the state partners in preparation of state level social watch reports, publication of the same and dissemination of national and state level studies and advocacy events. Over the last 3 years, Gujarat Social Watch which is affiliated with NSW has been publishing its analysis on "State assembly and its functioning" and its research findings and advocacy attracted the media attention widely. This year Gujarat Social Watch has come up with assessment of working of Environmental Court, National Green Tribunal (western region) for betterment of environment.

Paryavaran Mitra has been anchoring the Gujarat Social Watch since its inception and as an organization working in the field of environment and industrial pollution issues since long so it took the opportunity to do this research. Paryavaran Mitra on behalf of Gujarat Social Watch has done the assessment of working of the National Green Tribunal to review and analyze its functioning with respect to cases filed and the judgments given till now and to know if it serves the purpose to offer effective and fast redresses of cases related to environmental protection and conservation of natural resources and forests covering cases from Gujarat state.

Chapter 1 : About The Study

Aim of the Study

The Aim of the study is assessment of working of Western regional bench of National Green Tribunal and to analyze if in its current format is serving the purpose to give effective and fast redressal of environmental cases or not.

Objective of the study

The over all objective of the study is to understand the working of National Green Tribunal and review and analyze its functioning with respect to cases filed and the judgments given by Pune bench for cases from Gujarat till February 2014.

The major objectives of these interventions were to learn the organizational structure of the NGT, find out the impact of the NGT in acquiring the right to get clean environment, to check the legal procedure to transfer the pending cases to the NGT from state courts. It has helped to understand the impact of environmental court on existing judiciary system and to know how it has helped people to get justice. Also it gave us an opportunity to spread awareness about NGT.

Methodology adopted

ParyavaranMitra used different strategies and also a mix of them in working on this to assess the impact of the NGT in acquiring the right to get a clean environment. Through advocacy efforts, the organization focused on the Western region covering states. It used the information available on websites especially on www.greentribunal.gov.in and made extensive use of RTI Act to obtain information to employ in advocacy and raising demands. Gathering testimonies from local Gujarati people on their personal experience and feeling about the way the NGT dealt with their cases, the way distance impacted their lives, the transparency of the information available on NGT, was an important part of the strategy.

Limitation of the study

- Lack of reliable data limited the scope of the research.
- We faced problems to obtain information from official websites of concerned authorities.
- Some institutes took too much time or refused to give information under RTI act so we got limited information only.

Chapter 2: Introduction to National Green Tribunal

Need for Environmental Courts

Indian Courts entertained environmental issues by the means of writs and PILs, but the technicality was missing from the judiciary as expertise knowledge is must to decide environmental issue. The rise of environmental issues increased after the very well-known interpretation of the judiciary saying that 'Right To clean and healthy environment ' is part of our fundamental rights and is interpreted within the scope of Article 21 of the Constitution of India. There are numbers of M.C Mehta cases where the judiciary has taken very necessary stand point for the protection of environment. The Courts directed expert committees if any environmental issue knocks the Court of Law, but the report of expert committee was not interpreted in technical terms which is very essential. In cases like, M.C Mehta Vs. Union of India, 1986; Indian Council for Environmental-Legal Action Vs. Union of India, 1996; A.P Pollution Control Board Vs. M.V Naydu 1999; A.P Pollution Control Board Vs. M.V Naydu II, 2001, the supreme court has stretched on the point that it is a very important and prominent time to set up 'Environmental Courts'. The 186th report of Law Commission of India also emphasized on starting of environmental courts in the light of the 3rd case judgment from the above cited cases. The report also referred to countries like England, Australia, and New Zealand etc. where Environmental Courts have been started.

Key points - 186th report of Law Commission of India

- The Law Commission in its 186th Report has, inter-alia, recommended establishment of 'Environment Court' in each State, consisting of Judicial and Scientific experts in the field of environment for dealing with environmental disputes besides having appellate jurisdiction in respect of appeals under the various Pollution Control Laws.
- The Commission has also recommended repeal of the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997.
- To achieve the objective of Article 21, 47 and 51A (g) of the Constitution of India by means of fair, fast and satisfactory judicial procedure.
- 'Environment Courts' should be constituted in each state, and also stated that as under Article 253 read with Entry 13 list I of VII that the parliament have exclusive jurisdiction to enact law for the purpose of establishment.
- Emphasis on Stockholm declaration and the conference at Rio de Janeiro of 1992.
- No powers of Judicial review as under Article 226, but there can be provision for appeal to the Supreme Court.

- These Courts must be established to reduce the pressure and burden on the High Courts and Supreme Court. These Courts will be Courts of fact and law, exercising all powers of a civil court in its original jurisdiction.
- They will also have appellate judicial powers against orders passed by the concerned authorities under the Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 with an enabling provision that the Central Government may notify these Courts as appellate courts under other environment related Acts as well.
- The environmental court shall consist of a chairperson and at least two other members. Each environmental court shall be at least three scientific or technical experts known as commissioners.
- The Court shall not be bound to follow Civil Procedure Code and the rules of Evidence under the Indian Evidence Act, 1872.
- The Court should follow the principles of natural justice, and should apply the principles/doctrine of strict liability (rylands v. fletcher/Bhopal gas tragedy), polluter pays, doctrine of public trust, etc.
- The LOCUS STANDI before the court shall be as wide as it is before the High court/Supreme court. That means that any member for the cause of many can stand before the court of law.
- The powers of High Court under Article 226 and Supreme Court under 32 shall not be ousted.

Thus, a very specific and realistic approach was drawn in the 186th report of the Law commission of India with respect to the formulation of Environment courts.

About National Green Tribunal

The National Green Tribunal was established on 18th October 2010 under the National Green Tribunal Act, 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The objective was to provide a specialized forum for effective and speedy disposal of cases pertaining to environment protection, conservation of forests and for seeking compensation for damages caused to people or property due to violation of environmental laws or conditions specified while granting permissions. The commencement of this Tribunal is a giant step forward towards achieving environmental democracy, which functions with an objective of disposing off the case within six months of filing.

National Green Tribunal is India's first dedicated environmental court with a wide jurisdiction to deal with not only violations of environmental laws, but also to provide for compensation, relief and restoration of the ecology in accordance with the 'Polluter Pays' principle and powers to enforce the 'precautionary principle'.

National Green Tribunal Benches:

The National Green Tribunal started functioning since 4th July, 2011. The Principal Bench is based at New Delhi with circuit benches at Chennai, Bhopal, Pune and Kolkata so that it can reach remoter parts of India. The principal bench and the regional benches are all currently functional.

Table 1: NGT and its various Benches:

ZONE	PLACE OF SITTING	TERRITORIAL JURISDICTION	STARTED FROM
North	Delhi (Principal Bench)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National Capital Territory of Delhi and Union Territory of Chandigarh.	July 2010
West	Pune	Maharashtra, Gujarat, Goa with Union Territories of Daman and Diu and Dadra and Nagar Haveli.	August 2013
Central	Bhopal	Madhya Pradesh, Rajasthan and Chhattisgarh.	April 2013
South	Chennai	Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Pondicherry and Lakshadweep.	November 2012
East	Kolkata	West Bengal, Orissa, Bihar, Jharkhand, seven sister States of North- Eastern region, Sikkim, Andaman and Nicobar Islands.	May 2014

In addition, circuit courts have been conducted from time to time – during last 6 months of year 2013, circuit bench were conducted 3 times at Shimla and one time at Jodhpur.

Jurisdiction, power, proceedings and Procedures of the NGT

The legislature Act of Parliament defines the National Green Tribunal Act, 2010 as follows,

"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto"

The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in the schedule I and grant relief and compensation to the victims of pollution and other environmental damage arising under such enactments and to hear appeal under certain enactments in the Schedule.

The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal shall not be bound by the

procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Any person aggrieved by an order or decision of the Appellate Authority under the Acts in Schedule I may file an appeal to the National Green Tribunal in accordance with the provisions of the respective acts.

Principle to follow

- As per Section 20 of the Act, the Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

Who can apply or appeal to tribunal?

- Any person, who has sustained the injury; or
- The owner of the property to which the damage has been caused; or
- Where death has resulted due to environmental problems, then their legal representative of the deceased,
- Any agent, or legal representative authorized by such person or the owner of the property,
- Any aggrieved person, organization/institution, representative body,
- State government, union government, state pollution boards, environmental authorities, etc.

Here it is pertinent to note that, any aggrieved person, organization/institution or representative body clause upholds the concept of locus standi.

- The person should apply before the court within the period of 6 months from the date of cause of action rises, i.e. the limitation period. But if the court is satisfied that due to some sufficient cause the applicant was not allowed then the court may allow to file application within 60 days.
- There has been a provision under section 16 to appeal before the Supreme Court if the person is not satisfied with the judgement of the tribunal within 6 months.

Appellate jurisdiction

- Section 16 of the Act grants broad standing for appeals. The section provides opportunity for any “aggrieved person” to “prefer an appeal” to the tribunal from orders, decisions, directives or determinations entered by agencies administering ten different laws or regulations with a period of thirty days from the date on which the order or decision or direction or determination is communicated to him.
- In case the Tribunal feels the person was prevented from approaching the court, thirty days period can be extended to sixty days.

Chairperson and members of Tribunal

- The tribunal shall consist of a full time chairperson, judicial members and expert members. The minimum number of judicial and expert members prescribed is ten and maximum number is twenty in each category.
- Another important provision included in the law is that the chairperson, if find necessary, may invite any person or more person having specialized knowledge and experience in a particular case before the tribunal to assist the same in that case.
- A judge of the Supreme Court of India or Chief Justice of High Court is eligible to be Chairperson or judicial member of the Tribunal.
- Even existing or retired judge of High Court is qualified to be appointed as a Judicial Member.
- A person is qualified to be an expert member if he has Master of Science with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experiences in the field of environment and forests in a reputed National level institutions. Anyone who has administrative experience of fifteen years including experience of five years in dealing with environment matters in the Central Government or a State Government or in National or State level institution is also eligible to be an expert member.
- The Chairperson, Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government for a term of 5 years.
- The Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India.
- The Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of the Selection Committee, in the manner as prescribed in the Rules, notified by MoEF.
- To avoid conflict of interest, it is included explicitly in the Act that the chairperson, judicial members and expert members of the tribunal shall not hold any other office during their tenure.
- In addition, for a period of two years from the date on which they cease to hold office, accept any employment in or connected with the management or administration of, any person who has been a party to a proceeding before the tribunal. Doors are opened for them to be appointed by Central Government or State Government.

On 18 October 2010, Justice Lokeshwar Singh Panta became NGT's first Chairman. Currently it is chaired by Justice Swatanter Kumar.

An Effort to spread awareness about NGT:

In May 2011, a press statement was issued by NGT to the general public giving directions for those who could not file petitions because it was not functional till date.

Press statement :

Press statement

National Green Tribunal

Van Vigyan Bhawan,

Sec-5, R.K.Puram, New Delhi-110022

Hon'ble Supreme Court of India in its matter of UOI vs Vimal Bhai & others in SLP (Civil) No. 12065/2009, vide its order dated May 12, 2011, has directed the National Green Tribunal (NGT) to take follow up action in the process of implementation of the following two directions:

“Those, who could not file petitions before the National Green Tribunal because it did not become functional, may do so within a period of 60 days from 30.5.2011. The National Green Tribunal shall give wide publicity to this direction so that aggrieved parties can file appropriate petitions etc. within 60 days from 30.5.2011. The petitions which are filed within the aforesaid period shall not be treated as barred by time and be decided on merits. The parties shall also be entitled to file applications for interim relief before the National Green Tribunal.”

and,

“Till the benches of the National Green Tribunal become functional at Bhopal, Pune, Kolkata, and Chennai, the aggrieved persons may file petitions before the National Green Tribunal at Delhi. Once the Benches of the Tribunal become functional, the chairperson of the National Green Tribunal may transfer the cases to the concerned Benches”.

In terms of above said directions, this press statement is issued to the general public for their information.

Chapter 3: Western Region Bench of NGT at Pune

The western region bench of NGT was established in Pune in August 2013. It was authorized to receive applications and appeals including transfer cases relating to Western zone bench of NGT at Pune from the area of Maharashtra, Gujarat, Goa and Union Territories of Daman, Diu and Dadra and Nagar Haveli have to go to Pune bench.

With effect from 25th of August, 2013, Western Zonal Bench was constituted with:

1. Hon'ble Mr. V.R.Kingaonkar, Judicial Member
2. Hon'ble Dr. Ajay Achyutrao Deshpande, Expert Member

Cases at Pune bench

- NGT Delhi transferred cases from western states to the western region bench.
- Cases transferred from different High courts – we did application under Right to Information to different high courts to know the number of cases transferred to NGT, Pune.
 - Total no. of cases transferred from Gujarat High Court to NGT, Pune - 6 cases as on 14/3/14
 - Total no. of cases transferred from Bombay High Court (including bench at Aurangabad, Goa, Alibaug) to NGT, pune - 31 cases as on 9/2/14
 - Total no. of cases transferred from NGT, New Delhi and various High Courts within the Jurisdiction of NGT, Pune i.e. Gujarat HC, Bombay HC, and Bombay HC at Goa.- 59 as on 14/3/14
- Fresh cases were filed from different states. Below is a summary of newly admitted cases from different states.

Table 2: Month wise summary of cases received from Maharashtra till February 2014

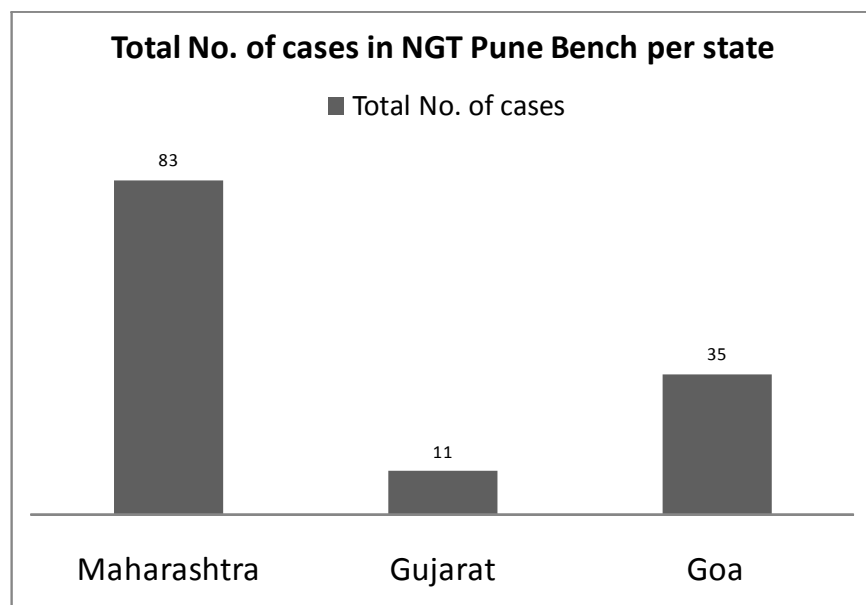
State Of Maharashtra	
Month	No. of Cases:
August-2013	5
September-2013	16
October-2013	29
November-2013	7
Devember-2013	6
January-2014	10
February-2014	10
TOTAL NO OF CASES-83	

Table 3: Month wise summary of cases received from Gujarat

State Of Gujarat	
Month	No. of Cases:
August-2013	1
September-2013	6
October-2013	1
November-2013	1
Devenber-2013	-
January-2014	1
February-2014	1
TOTAL NO OF CASES-11	

Table 4: Month wise summary of cases from Goa

State Of Goa	
Month	No. of Cases:
August-2013	3
September-2013	3
October-2013	17
November-2013	5
December-2013	1
January-2014	3
February-2014	3
TOTAL NO OF CASES-35	



Chapter 4: Summary of Cases from Gujarat at NGT

In order to find out nature of the cases from Gujarat, we selected few cases and briefly studied them in order to find out more about functioning and effectiveness of NGT.

After analyzing 12 cases of Gujarat filed at NGT, it was analyzed that 8 cases were filed by the aggrieved persons, 1 case was filed by company, and 3 cases were filed by a Public Trust organization. Thus we can understand that people are aware of their legal rights to move the tribunal for issues related to environment.

Table 5: Appellate detail in terms of aggrieved person, a company, NGO or trust

Sr. No.	Parties	Appellate whether aggrieved person, a company, NGO or Trust
1.	Vajubhai Arsibhai DodiyaOrs. Vs Gujarat PCB Ors.	Aggrieved Persons, agriculturalists
2.	Hussain Saleh Mahmad Usman Bhai Kara Vs Gujarat State Level Environment Impact Assessment Authority and Others	Four aggrieved Persons, Fishermen
3.	Nirma Ltd. Vs Ministry of Environment and Forest and Others	Public Trust Organization comprising of aggrieved persons.
4.	M/s Gujarat Eco Textile Part Ltd. Vs Ministry of Environment &	Appellate is a company challenging the denial of EC
5.	Forest and Others AmishabenThakorbbhai Patel Vs Union of India and Others*	challenging the denial of EC
6.	MayurKarsanbbhaiParmar and Another Vs Union of India and Others	Appellate is an aggrieved person.
7.	Vinod R. Patel Vs. Gujarat State Level Impact Assessment Authority and Others	Appellate are the aggrieved persons.

8.	RajendraGoyal Vs Union of India and Others*	The Appellate is an aggrieved person.
9.	GauRaxaHitraxakManch and GaucharParyavaranPouchav Trust Rajula Vs Union of India Ors.	The Appellate is a registered trust.
10.	ParyavaranMitra (Janvikas) and Ors. Vs Gujarat State Pollution Control Board and Ors.	The Appellate is NGO
11.	Mahesh Chandulal Solanki and Another Vs Union of India and Others	The Appellate are the aggrieved persons.
12.	Bharat Kumar K. Patel Vs MoEF and Ors.	The Appellate is an aggrieved person.

Further we studied case detail about all the 12 cases and made a brief summary which gave an idea about the variety of issues coming to court for getting justice – solid waste management problem, industrial pollution effects, effect on agriculture land due to pollution, livelihood issue of fishermen etc. Brief summary of the cases is as follows:

Case 1: Vajubhai Arsibhai Dodiya Ors. Vs Gujarat PCB Ors.

Brief Facts : It was alleged that the respondent's cement plant is being operated in contraventions of the provisions of the Environment (Protection) Act 1986, Air (Prevention and control of Pollution) Act 1981, and Water (Prevention and control of Pollution) Act 1974. The Applicants claim to be agriculturists and have their own lands near the Company. It is the case of the applicants that the respondent has not provided proper facilities for disposal of liquid and solid wastes, proper drainage system for disposal of poisonous chemical, and water dust/ powder containment System in its cement plant and repeatedly, it is noticed that the pollution is spread away in the nearby areas of the cement company which has destroyed valuable crops, trees, vegetables, wells, and agriculture lands of the agriculturists.

Order Passed:

- The GPCB was directed to investigate into the matter & to take necessary action if required.
- Directed the Collector and District Magistrate to verify whether all the agriculturists in the said impact zone had been duly compensated as per the formula derived by the Expert Committee formed by the industry.

- Imposed exemplary cost of Rs. 1 lakh to GPCB and the District Administration, and 5 lakh on the respondent industry.

Case 2: Hussain Saleh Mahmad Usman Bhai Kara Vs Gujarat State Level Environment Impact Assessment Authority and Others

Brief Facts : The State Level Environment Impact Assessment Authority, Gujarat (SLEIAA) granted EC for establishing Thermal Power Plant at Village: Bhadreshwar, Taluka: Mundra, District: Kutch in favour of M/s OPG Power Gujarat Pvt. Ltd. It was alleged that it has caused violation of certain conditions stipulated in the aforesaid EC, more particularly violation of the guidelines issued under the Forest (Conservation) Act, 1980.

Order Passed:

- The Court directed the industry to adhere to the conditions laid down in the EC, and the provisions of Forest (Conservation) Act, 1980.

Case 3 : Nirma Ltd. Vs Ministry of Environment and Forest and Others

Brief facts : The order issued by the MoEF, revoking clearance to the company, the revocation was executed by the pressure from a Public trust organization comprising of aggrieved persons in village Padhiyarka of Mahuva taluka in Bhavnagar, Gujarat.

Order Passed:

- As the case is under the Supreme Court so the judgement of the Supreme Court will be binding on the tribunal and the case is still pending before the tribunal.

Case 4 : M/s Gujarat Eco Textile Part Ltd. Vs Ministry of Environment & Forest and Others

Brief Facts : M/s. Gujarat Eco Textile Park Limited was denied permission by Expert Appraisal Committee (EAC) to accept membership of the industrial units which are operating outside the Gujarat Eco Textile Park for treatment of the effluents generated from their units. The company challenged the denial of EC.

Order Passed:

- It was held to be unsustainable in the eye of law and quashed. The respondents were directed to allow the amendment to the EC as was sought by the appellant and the appeal was accordingly allowed.

Case 5. AmishabenThakorbhai Patel Vs Union of India and Others,RajendraGoyal Vs Union of India and Others &Ashish Rajanbhai Shah v. Union of India and Ors

Brief Facts : The case was filed because of allotment on Rental Lease Agreement basis, the unnumbered land, out of the lands of Block Nos. 1639 and -1640 Paiki, situated in village Nada, Taluka Jambusar, District Bharuch. Because of construction of obstructing mud-walls in the sea belt, the natural flow of sea water has stopped and hence damage is being caused to the Mangrove Trees.

Order Passed:

- The appeal was allowed and the tribunal directed the director of the company to hear the problems of the aggrieved persons.

Case 6 : Mayur Karsanbhai Parmar and others Vs Union of India and Others

Brief Facts : This case consisted of two applications, seeking more or less identical reliefs. In the first application, apprehended the likelihood of being affected by the proposed Greenfield Port (Seema Port) that was to be established at Sea Coast of Village Chhara. The applicants invoked section 8 of EIA, 2006. In the second application, the same applicants apprehended to be affected by the Thermal Power Plant that was proposed to be installed by M/s. Shapoorji Paloonji and Company Ltd.

Order Passed:

- The Tribunal ordered that firstly the applicants should file detailed objection to the EAC and MoEF. Both the appeals were accordingly disposed off granting liberty to the applicants to approach the Tribunal again in case exigencies arise.

Case 7 : Vinod R. Patel Vs. Gujarat State Level Impact Assessment Authority and Others

Brief Facts : This appeal was filed under Section 18(1) read with Section 14(1) and Section 16 (h) of the National Green Tribunal Act, 2010, challenging Environmental Clearance granted by the State Level Environment Impact Assessment Authority of Gujarat for setting up of the alumina refinery plant in Gujarat on 19th February, 2012.

Order Passed:

- The Tribunal directed GPCB to carry out periodic monitoring and to ensure the compliances.
- The project proponent was asked to engage environmental consultant to conduct primary and socio-economic survey in the area of influence wherein social attention was to be paid.

Case 8: Mahesh Chandulal Solanki and Another Vs Union of India and Others

Brief Facts : This Case deals with the (EC) that permitted M/S Jindal Saw Limited to expand their “Smaller Diameter Ductile Iron Pipe” Plant in village Samaghogha, Taluka: Mundra, District: Kutch. The Appellants who were residents of nearby area claim that the environment, in which they live and make their living is going to be affected seriously as a result of the expansion of the said plant; and more so as the village Samaghogha is substantially polluted due to concentration of several industries including manufacturing unit of the Respondent No. 5 producing iron pipes, having come up within the limits of Village Samaghogha.

Order Passed:

- The project proponent was asked to deposit Rs. 1,00,00,000 with the office of NGT. It will be disbursed after six-months of monitoring by the GPCB.

Case 9 : Bharat Kumar K. Patel Vs MoEF and Ors.

Brief Facts : This application was regarding the proposed development of 5000 Hectare port based multi-product SEZ in Kandla and Tuna area of Gandhidham, Bhuj, Gujrat. As per the CRZ Notification 2011 the entire Gulf of Kutch has been declared as a “Critical Vulnerable Coastal Area” due to its ecologically sensitive nature and as a result, any industrial development in the said area is prohibited. The applicant alleged that the proposed development was in violation of CRZ Notification 2011, Environment (Protection) Act, 1986 as well as other environmental norms.

Order Passed:

- The application was dismissed on the grounds of limitation period as per section 14 of NGT, Act.
- The applicant was also given the liberty to represent his case by way of filing application to MoEF for due consideration in the further appraisal process. Thus with these observations, the application was disposed of.

After studying the cases from Gujarat, knowing the nature of case and judgment given, we decided to check ground reality to know after judgment scenario. We choose 2 cases – one from NGT Delhi and another from newly constituted western region bench. In next chapter, we have given the ground reality after the tribunal’s order.

Chapter 5: Taking stock of implementation of Judgment in 2 cases of Gujarat

Case 1: Hanjer Biotech Application no. 131/2013, Paryavaran Mitra Vs Gujarat State PCB

Application no. 131/2013, Paryavaran Mitra Vs Gujarat State PCB

In this case, petitioners of Rajkot filed a case against the Gujarat State Pollution Control Board (GPCB) for water and air pollution caused by waste disposal. Paryavaran Mitra started being involved in this case after one of the applicant (Shailendra Sinh Jadeja) came to us after reading an article about Mahesh Pandya in the newspapers. Moreover, Paryavaran Mitra is familiar with the functioning of the NGT, making it easier for the plaintiffs. That's how Paryavaran Mitra decided to petition against the GPCB as well. Therefore, the applicants contacted Paryavaran Mitra, who then decided to file a case against the GPCB. The case was disposed after 6 months and it was decided that GPCB had to give Rs 1 Lac to the Applicants and Rs 25,00,000 of compensation within a period of four (4) weeks. An order was passed for management of the MSW disposal and landfill management site.

Case Facts:

This application was filed by the applicants alleging the air pollution and water pollution caused by the Rajkot Municipal Solid Waste disposal and landfill management site at village Nakravadi, managed by Rajkot Municipal Corporation and M/s Hanjer Biotech Energies Pvt Ltd.

Rajkot Municipal Corporation received authorization from the GPCB, under the Municipal Solid Waste (Management and Handling) Rules, 2000, for setting up and operating of waste processing/disposal facility at Survey No.222/P, Village Nakravadi, District Rajkot on 30 acres of land. In pursuance to the Authorization received from the GPCB, Rajkot Municipal Corporation entered into contract with M/s Hanjer Biotech Energies Pvt Ltd, for the purpose of erecting and commissioning of the waste conservation plant and adequate service facility to treat the waste material. Under the agreement, the HBEPL, was bound to maintain Municipal solid waste site in hygienic manner as required under the Municipal Solid Waste Rules.

The applicants contended that the RMC and State of Gujarat granted various concessions for the treatment of municipal solid waste on the grazing lands used by the villagers of Nakravadi. Some parts of said lands were adversely affected by the dispersion of the MSW, resulting into contamination of groundwater, degradation of quality of the farm lands, and adverse impact of the ill-treated or untreated dispersion of the MSW. Various show cause notices were issued to RMC and HBEPL by the GPCB, but to no avail.

They submitted that it was essential to close down the landfill site and restitute the land in question. The applicants further alleged that selection of MSW site was against the rules. They sought closure of

Rajkot MSW disposal and landfill management site, assessment of damage caused to livestock, health, village common lands and sources of water etc., and direction against polluters to pay the compensation for such losses.

The respondent filed a reply affidavit and submitted that necessary action was taken against RMC whenever complaints were received in the context of violations of the MSW Rules. Despite various notices served to RMC and HBEPL it was observed that RMC had failed to ensure the compliance of the said rules.

The case was against CPCB, but it contended that it had no role to play in the matter as it had no responsibility to exercise control over Municipal affairs pertaining to observance of the MSW Rules, 2000 and that the authorization was issued by GPCB to RMC. According to CPCB, GPCB, was responsible for monitoring compliances of the standards regarding groundwater, ambient air, leachate and the composite quality. For such reasons, the CPCB, declined to resist the application.

In its contention RMC resisted the application on various grounds. One such ground being that the application was barred by limitation because the MSW was being disposed of at the land allotted by the State Government since 2002 and 2004 and that the applicants had filed the application without any foundation and after more than five years period of the commencement of the activity of the MSW disposal. Later on, RMC entered into another contract with HBEPL, for setting up landfill site for disposal of the MSW that remained after recycling in the processing plant.

Order Passed:

On the first question of the application being barred by limitation, the contention of the applicants was affirmed by the Tribunal that after reviewing all the facts. Thus, the application was within the period of limitation as per Section 14(3) and Section 15(4) of the National Green Tribunal Act, 2010.

Applicants had placed on record various complaints made by the villagers, regarding the foul smell emanating from the landfill site. Here, the problem was that the first landfill site was filled up to its full capacity and therefore during rainy season the disposal of residual solid wastes became unmanageable. This residual waste mixed up with the rain water and flowed along with surface water, due to slope instability. Thus the real problem was not of selection of landfill site, but that of mismanagement of the MSW disposal by the contractor, HBEPL.

The contention of RMC was that the plant was carrying out processing of about 400- 450 MT of MSW every day and if such processing plant was closed down, it would not only be dangerous to the environment, but would also result in spreading of epidemic diseases.

Deciding upon the above facts, prayer to close the landfill site was dismissed and an order was passed to ensure due compliance of the conditions and directions to prevent any mishandling and thereby causing any disturbance to the ecology and the people of that area.

Thus the Tribunal has held that the location of the landfill site was not illegal and improper, but here the “Polluter Pay’s Principle” had to be applied. Also the villagers who had agricultural lands or residences in the proximity of 500 meters from the site were identified and paid compensation of Rs. 20,000/- each by HBEPL.

On the contention of CPCB that it did not have any role in this matter, it was observed that as per MoEF Notification No.SO.730 (e) dated 10th July, 2002, Central Govt. has delegated powers of issuance of directions under Section 5 of Environment (Protection) Act, 1986 to the Chairman, CPCB, to issue directions to any Industry or any local or other authority for violation of the standards and Rules relating to hazardous wastes, bio medical wastes, hazardous chemicals, industrial solid wastes, Municipal solid wastes, including plastic wastes, notified in the Environment (Protection) Act, 1986.

Thus, the application was accordingly disposed of by directing the respondents to pay together costs of Rs. 1,00,000/- to the applicants.

Analysis and Observation:

The respondents raised the contention that if the treatment process is being stopped then later on the public life and environment thereof will face various problems and harm them adversely. They also raised the concern of spreading of epidemics and diseases and will affect the health of the public. The court on this ground did not order to stop these activities and directed GPCB and the authorities to look at the activities and control them. The applicants were given cost of Rs. 1, 00,000.

- Here the point to be noted is that on the grounds of future concern and affect to the larger public the court relaxed its own order and thus it helped the respondents to escape from the liability. Thus, the tribunal should look into the current circumstances more specifically. The tribunals should not only direct, but should make them liable of the activities which have caused threats for the well-being of the environment.
- The tribunal directed to pay the affected farmers by taking into consideration the principle of ‘polluter pays’ but actually paying money to the affected does not clean the hands of the wrong doer? Here again the question stands on the face of our legal system where the wrong doer walks free by paying some mere penalty but what about the wrong done?

Field visit after judgment:

For further study about the case, we were called to visit the site i.e. The Hanjar Biotech Energies Pvt. Ltd which is 30 minutes away from Rajkot. We also went to a nearby village and interacted with some villagers about this case. Many villagers were infected due to this. The National Health Council Minister was also present. He decided to give a free treatment to all the infected people.



Photo: Recent photographs of the site at Rajkot

Situation after judgment:

Currently, the plant is closed down and the process of the waste management is stopped and dumping of the waste is done in open grounds. No action of management has been taken since December 2013. The GPCB is sleeping over their duties and no such action has been taken against the authorities. The tribunal has strictly directed GPCB to see to it that the pollution parameters are not tampered by the authorities, but as the plant has been closed, it is leading to more pollution. Instances of fire were also noticed by the locals causing threat to the public. The Company i.e. the HBEPL has disappeared and is no more engaged with the RMC. HBEPL and RMC have mutually disposed the contractual liability although the contract was for 30 years. The municipal corporation has invited new tender for the waste management.

Case 2: Gau Raxa Hitraxak Manch and Gauchar Paryavaran Pouchav Trust Rajula Vs

Union of India Ors.

Case Facts:

This was an appeal against an order passed by Ministry of Environment & Forest granting Environmental Clearance for the expansion of a port. M/s Gujarat Pipavav Port Ltd. initially started its port in 1998. The port was gradually expanded on three occasions, in the years 2000, 2003, and 2006. The appeal was filed challenging the EC granted for further expansion of the port, about three times of the then existing length for handling 26 million tonnes of bulk and about 8 times of TEU's containers than the present capacity, to M/s Gujarat Pipavav Port Ltd.

The appellant in this case was a registered trust that proclaimed itself as an environmental and social activist and had challenged the order, whereby, the MoEF granted EC for addition of berths, utilisation of more area and installation of equipment would have enhanced capacity to handle the cargos. There was a mangrove forest alongside the coastal wall of the port in question which faced environmental damage and degradation. M/s Gujarat Pipavav Port Ltd. had encroached on 'gauchar' land (village grazing land). According to the applicants, this would have adversely affected flora and fauna of the area and disrupted the life of the villagers living close by. The applicants contended that they raised a number of pertinent questions in the public hearing, however none of them were paid heed to and the EC was granted. However, it was the case of the Project Proponent that all the issues had been considered and a revised EIA report was filed.

Order Passed:

The procedure for an environment clearance is a 4 step process. The Bench emphasized on each stage of the process, especially stage 4 – Appraisal. The following portion of the same was emphasized, "On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same."

Stage 4 is therefore, not a mere formality. It does require the detailed scrutiny by the EAC or SEIAA of the application as well as documents filed such as the final EIA Report, outcome of the public consultation, including public hearing proceedings, etc.

The impugned order showed that the EAC had sought additional clarifications from the Project Proponent. Obviously, the EAC was not satisfied at the initial stage after the public hearing was held and as such decided to call for further information by issuance of modified ToR. It was necessary, therefore, to examine as to whether the additional ToR was duly responded to by the Project Proponent and such responses were of satisfactory nature.

It was felt to be necessary to keep the impugned order in abeyance with direction to the MoEF and EAC to appraise the project afresh and pass the necessary reasoned order either for approval or for rejection on its merits.

Thus, the Appeal was partly allowed. The order dated passed by the MoEF was to be kept in abeyance for a period of six months. The matter was remitted to the EAC and MoEF for the purpose of reconsideration of Stage-(4)-Appraisal. The Appraisal of the project was to be made and final order was to be passed by the concerned authorities within statutory period as provided by MoEF Notification dated 14.9.2006. The appeal was accordingly disposed of without costs.

Analysis and Observation:

- If the evidences were observed at initial stage, court should not wait, they should give directions accordingly. The court explained here the four stages to get clearance, and said that the case is not valid as the last step of clearance i.e. the appraisal is not yet done. But here the question of conflict should be *SalusPopuliSuprema* i.e. Welfare of the people should be supreme law so the tribunal should not allow the further activity for the clearance process because the public is already getting affected and if at right time the process of expansion is not stopped then it may lead to greater problems. 'Prevention is better than cure', the court should have thought in futuristic way to prevent any further ill threats to the public.

Situation after judgment:

The project has still continued to violate EC conditions resulting in increased air and water pollution. The road used by villagers to move out from village, which was blocked by the project is now partially opened only for certain time period (time fixed by the project). Also the cargos or containers which are loaded and unloaded are kept on open grounds. There is no special area for it and also they don't have any area to place their cargos or the containers which are imported-exported. These are kept on open grounds resulting in water pollution killing 4-5 cows & buffaloes. They have changed the flow of water due to which farm lands has become saline resulting in infertile lands in Rampara Village. During construction activity for expansion, they buried the mangroves and dig it into land and claimed that there were no mangroves present. The fishermen depend directly on biological diversity of sea for their livelihoods, which was prominently near the mangroves. As there was deforestation of the mangroves, the fishermen had to go further in the sea for fishing. Thus fishermen are affected economically especially in the Shiyalbet village. Moreover, they claim on papers that they have adopted villages and allocate funds for welfare of the villagers, but reality is they have not even provided basic facilities to the adopted villages.



Chapter 6: Exploring NGT through RTI

Use of RTI & our journey to obtain information

Mr. Manmohan Singh while valedictory ceremony of National convention on First Year of RTI stressed upon 'free flow of information' and the 'implementation of the act' which he considered as an important milestone to achieve for a prosperous society. But is it really a free flow of information? The question stands like a concrete wall as, a common man faces various hindrance even to get a petty information from the authorities. As, while working on cases in National Green Tribunals, various RTI's were filed in various High courts of the India. The responses seemed to show that the judiciary, which has to protect the law, and facilitate good implementation of the legislation, does not actually do so in respect with Right to Information Act, 2005. Due to misleading and inappropriate information provided in the rules and regulation prepared by each different High Court as empowered by section 28 of the act, leads to chaos and ultimately the general public do not get specific information which is expected so that the process of filling an RTI happens smoothly.

We faced various difficulties in obtaining or experiencing 'the free flow of information' from the various High courts and National Green Tribunals (NGT) to obtain the information regarding various cases transferred to NGT by the High Court, details of ongoing cases, and cases filed till date in NGT etc.

Following table shows the information regarding the implication of filing RTI and the information provided therein.

Sr. No.	High Court/Tribunal from cases were transferred:	If no Information provided/ appeal/ or no response:	Transferred to:	Number of Cases Transferred:
1.	High Court of Himachal Pradesh	Information Provided National Green Tribunal, principal bench, Delhi		10 as on 30/7/13
2.	High Court of Bombay At Goa	Information Provided National Green Tribunal, principal bench, New Delhi National Green tribunal, Western Zone bench, Pune		3 as on 11/12/13 19 as on 06/12/13
3.	Punjab and Haryana High Court, Chandigarh	NO INFORMATION PROVIDED	-	-
4.	Bombay High Court, Mumbai	NO INFORMATION PROVIDED	-	-
5.	Madras High Court	Rejected the Application	-	-

6.	Gujarat High Court	No response led to first Appeal and after new RTI, Information Provided	Not categorically stated about the department	5 as on 14/2/14
7.	Gujarat Pollution Control Board	Intimation regarding further payment of fees than no further response.	-	-
8.	Jammu & Kashmir High Court	Responded accordingly	-	-
9.	Patna High Court	First application: Rejection on the basis of Rule 7(vi) of the Patna High Court (RTI) rules, but there is no such provision. Second application: information Provided	- -	- -
10.	Orissa High Court	The application was rejected on the grounds of Rule 4(a) of the Orissa High court (RTI) Rules. But the reason was not specifically justified.	-	-
11.	National Green Tribunal, principal bench, New Delhi	RTI response From NGT, Pune	NGT, western zone, Pune bench	32 as on 9/2/14
12.	Madhya Pradesh High Court	NO RESPONSE	-	-
13.	Manipur High Court	NO RESPONSE	-	-
14.	Chhattisgarh high Court	The Response stated that the applicant has to pay Rs. 10 whereas the Rules states that the Applicant has to pay Rs. 12	-	-
15.	Guwahati High Court	NO RESPONSE		
16.	Sikkim High Court	Information Provided	-	-
17.	Karnataka High Court	Information Provided	National Green Tribunal, principal bench, New Delhi	7 as on 05/02/13

RTI information from NGT, Pune:

RTI application was sent on 9th of February 2014 seeking information that how many cases were transferred from NGT (New Delhi) to NGT western Zone bench, Pune and details regarding the number of cases transferred from the various high courts across the country. The mode of payment was IPO of Rs. 10. We received the response from the Assistant Public Information Officer, National Green Tribunal Western Zone Bench, Pune. We received necessary and satisfactory information. We again sent another RTI application on 14th of March 2014, and we received necessary information and satisfactory information from the Assistant Public Information Officer.

Observations and Suggestions regarding information obtained through RTI

- **High Court of Gujarat :** As in the First appeal we found that the PIO did not receive the RTI application, so on some part there has been a problem in the communication department of the High Court of Gujarat. Thus the communication network regarding RTI application should be strengthened within the departments.
- **High Court of Karnataka :** The information was provided accordingly and satisfactorily/reasonably within the proper period of time, thus a good administration of RTI rules and its implementation is reflected.
- **Punjab & Haryana High Court :** There was ambiguity with respect to whom the application was to be paid on whose favour it has to be paid. We applied 3 times with corrections and barred all the expenses, even after the appeal they stressed on Rule 7(vi) of Punjab & Haryana High Court (RTI) Rules, 2007, which is actually omitted. We suggest to the PIO and the High court to check the Rule 7(vi) again as on the website the rule 7(vi) is omitted with correction slip 161 Rules /II.D4
- **Bombay High Court :** Bombay High Court rejected the application on some unreasonable grounds. We suggest that The RTI rules of Bombay High Court should be amended and made more flexible because the main reason for the disposal of our application was that the application was not in the proper form, that they want according to Form-A that they have provided, but there is no such compulsion for a format of RTI application. Thus the rules should be relaxed accordingly.
- **Madras High Court :** The RTI application was disposed on the grounds that the mode of payment of fees was improper but it was actually according to the rules specified on the website. Thus, we suggest

that there should be intimation from the PIO about the grounds of rejection and should provide further information to correct any mistake while applying the same.

- **Himachal Pradesh High Court :** They have good administration with respect RTI, they provided us proper information accordingly.
- **Patna High Court :** We strongly suggest to upload the Rules i.e. Patna High Court Rules (RTI) on their website as which is uploaded on the website is not legible and the applicant cannot even read properly.
- **Orissa High Court :** The State PIO rejected the application stating that it was not according to the rule Rule 4(a) of The Orissa High Court Right to Information Rules, 2005, but the application was according to the rules. We recommend them that the SPIO should state specific grounds of disposal and specifically that why the application was rejected.
- **High Court of Madhya Pradesh :** We did not received any response from the PIO regarding the RTI application, so that we did First Appeal to the Appellate Authority of the High Court, and even after the appeal we did not received any response from the authority. Thus we categorically recommend that the administration of RTI is not administered which hampers the implementation of RTI ACT.
- **Manipur High Court :** The PIO failed to response on the RTI application and we did not received any information. Thus we suggest that the administration of RTI should be considered and should be taken seriously by the Manipur High Court.
- **Chhattisgarh High Court :** There was ambiguity with respect to the amount of fees, as the PIO asked to pay Rs. 10 whereas the Rule 3 of the Chhattisgarh High Court states that the application fee is Rs. 12, and we did accordingly. Thus we recommend that the PIO's should be imparted training or they should be made aware regarding the proper rules and regulations.
- **Guwahati High Court :** The PIO provided with satisfactory and required information within the acceptable time period which shows good administration of RTI in Guwahati High Court.
- **Bombay High Court at Goa :** The PIO provided with satisfactory and required information within acceptable time period which shows good administration and implementation of RTI Act in the Bombay High Court at Goa.

Observation regarding RTI Act:

- The overall experience of RTI highlighted the limitations of the implementation of the Act like RTI which facilitates the democratic transparency in the public. We faced many problems in common with various high courts regarding, the mode of payment, the amount of payment, and to whom it has to be addressed, etc. The rules on the websites of some of the high courts were misleading and specific information was not given. Some grounds of disposal were in contravention with the RTI ACT, while in some RTI response the authority did not state the grounds of disposal which is mandatory according to the RTI ACT. The RTI experience was challenging due to lack of clear information and making the free flow of information more difficult.

Suggestions:

- The Rule about Right to Information as mentioned in the websites should be reviewed by the authorities because on various websites the rules were not properly mentioned. The mode of payment, the amount should be made same at every institution so that ambiguity up to some extent can be controlled. The grounds of disposal should be specifically mentioned if the RTI application is rejected. Sometimes we have experienced that even after the First Appeal we did not receive any such response. Thus, the administration should be controlled more properly.

Chapter 7: Voices of different Stakeholders

Case I: Application no. 131/2013, Paryavaran Mitra Vs Gujarat State PCB

In the case Application No. 131/2013, petitioners of Rajkot filed a case against the Gujarat State Pollution Control Board (GPCB). In spite of the local people's numerous complaints to the GPCB and other authorities about the waste disposed of by the Rajkot Municipal Solid Waste (Hanzar Bio Tech), nothing was done. Indeed, this waste disposal caused water and air pollution. Therefore, the applicants contacted ParyavaranMitra, who then decided to also petition against the GPCB. The case was disposed after 6 months and it was decided that GPCB had to give Rs 1 Lac to the Applicants and Rs 25, 00,000 of compensation within a period of four (4) weeks.

Paryavaran Mitra started being involved in this case after one of the applicant (Sailendra Sinh Jadeja) came to us. He had read an article about Mahesh Pandya in the newspapers. Moreover ParyavaranMitra is familiar with the functioning of the NGT, making it easier for the plaintiffs. That's how Paryavaran Mitra decided to petition against the GPCB as well.

Questions to the petitioner (Sailendra Sinh Jadeja) of case I:



1. Are you satisfied by the judgment given by the NGT?

Ans: We are very satisfied by the judgment. It was very fast, it took only 6 months. But, till now, the solution has yet to be implemented since the dumping of waste is still on process and compensation has not been given yet.

2. How was your experience with the NGT?

Ans: Distance was not an issue, all the communication was done through phone calls and emails. We felt that the access to information was simple and transparent. The lawyers were a real support.

3. The Show Cause notices were issued to RMC and HBEPL by the GPCB, but there was no such response, then why GPCB did not opt to take any further strict action?

Ans: Yes, due to dispersion of waste there was contamination of groundwater and degradation of quality of farm land ultimately affecting health and economic status of the affected people. GPCB should be stricter because ultimately it is the public who is affected the most. GPCB is taking strict action only against private industries, but is lenient with municipal or government organizations. We can always feel that there is some co-ordination or coalition of GPCB and Municipal Corporation. GPCB was hesitant to take action against Municipal Corporation as political interference comes into picture.

4. The main contention of RMC, which the tribunal paid heed to was that the closure of the plant would be dangerous to the environment, and would also result in spreading of epidemic diseases, how far this contention is valid, because indirectly it helped in relaxing the liability of the respondents?

Ans: The RMC had only one stand and only this contention were being stretched by the RMC. They invoked this contention because this was the only resort to the doom. Yes, it helped to relax the liability of the respondents and the tribunal should have understood the problem in a broader way and should see to the current circumstances that the plant is already causing much harm to the public health and environment.

5. What is the current scenario or the scenario after the NGT judgement?

Ans: Currently, the plant is closed down and the process of the waste management is stopped and dumping of the waste is done in open grounds. Although, no action of management has been taken since December 2013. The GPCB is sleeping over their duties and no such action has been taken against the authorities. The tribunal have strictly directed GPCB to see to it that the pollution parameters are not tampered by the authorities, but as the plant has been closed it is leading to more pollution. Instances of fire were also noticed by the localities causing threat to the public. The Company i.e. the HBEPL has disappeared and is no more engaged with the municipal corporation. HBEPL and RMC has mutually disposed the contractual liability although the contract was for 30 years. The municipal corporation have invited new tender for the waste management. Monsoon is also a matter of concern because due to rains the waste will get mixed in water and flow in river, lakes, etc.

6. 'Polluters pay principle' is one of the world wide accepted approach for environment cases, but do you think money can compensate the cost of degradation of environment and the harm to the health of the public? What is your standpoint?

Ans: No, not at all, the liability of the respondents should not be relaxed by paying of some money. Because big industries, and the corporations pay some money and then they escape from their liability. Thus sometimes this principles is considered as empowering money over the liability.

7. What kind of approaches now, as you are appealing to the Supreme Court, as the burden of proof shifts towards you?

Ans: The main contention will be that there should be investigation agency or some higher authority to conduct investigation on the officer of the municipal corporation because the concerned officer did not worked with respect to the parameters of pollution. There should be also increase in the amount of compensation, 'we would demand the amount in crores'. There is also contempt of court by the respondents as they have closed the plant as the court directed to properly maintain the plant not to closure of the plant. The main contention of the respondents was that the closure of the plant would lead to problem of larger scale to the environment and public health, then why they have closed the plant since December 2013? Thus, RMC misguided the tribunal.

Case II: Appeal No. 47/2012, Gau Raxa Hitraxak Manch and Gauchar Paryavaran Pouchav Trust Rajula Vs Union of India Ors.

An EPH was organized for the project of the Pipava port, many opposed it because they felt that the place was already being polluted. They forwarded the complaint against the pollution caused by the port officials to the GPCB, CPCB but the port officials still obtained the EC for their new project. Therefore opponents of the project filed a case in NGT. The NGT stated that if so required comparison could be made with the measures adopted by the other such ports located elsewhere in country to avoid the adverse impact on environment and the surrounding area.

For many years, Paryavaran Mitra had received complaints from people of Mundra about the issues related to environment and industries; therefore we were very familiar with the situation going on there. After finding out about this case, we tried to understand the reality of the case and follow up the judgment.

Questions to the petitioners (Chetan Vyas) of Case IV:



1. How did you find out about the NGT?

Ans: Paryavaran Mitra publishes a bi-monthly newsletter. I am paralegal of Paryavaran Mitra and thus read about the NGT in it and we decided to file case in the tribunal. I am grateful to Mahesh Pandya for his financial and technical support.

2. Was the location of the NGT an issue?

Ans: Financially, it was not really an issue because all the lawyers' fees were covered by Paryavaran Mitra. However the location (Delhi) was an issue, since we felt it was hard to express ourselves in another language than Gujarati. We also had to go by train, which could take up to six days round trip. As we had to go about three times, it cost us about Rs 25,000.

3. How do you feel about the NGT?

Ans: Beside the issue related by the distance, we were very satisfied by the time frame. It took only one year to obtain a judgment, which, in our opinion, is very fast.

4. What kind of problems people were facing due to the project?

Ans: Due to deforestation of Mangroves, polluted water due to port is degrading our land. Also project has build sand walls stopping natural flow of sea water. The responsibility of development of villages like Shiyalbet, Kadiyari, Rampara, and Bherai was not exercised. Also, the expansion of the port is invading into Gauchar land (land for Grazing).

5. Has the project violated conditions mentioned in the prior Environmental Clearances?

Ans: There has been various violation of conditions laid down in the prior ECs. The waste was dumped on open grounds and farm lands. The project adopted 4-5 villages, has fail to provide basic facilities like water, primary education, and overall welfare of the people. On the contradictory, it is causing pollution which is causing various problems to the people residing in the nearby villages.

6. What is the situation after the Judgement?

Ans: The project has still continued to violate EC conditions resulting in increased air and water pollution. The road used by villagers to move out from village, which was blocked by the project is now partially opened only for certain time period (time fixed by the project). Also the cargos or containers which are loaded and unloaded are kept on open grounds. There is no special area for it and also they don't have any area to place their cargos or the containers which are imported-exported. These are kept on open grounds resulting in water pollution killing 4-5 cows & buffaloes. They have changed the flow of water due to which farm lands has become saline resulting in infertile lands in Rampara Village. During construction activity for expansion, they buried the mangroves and dig it into land and claimed that there were no mangroves present. The fishermen depend directly on biological diversity of sea for their livelihoods, which was prominently near the mangroves. As there was deforestation of the mangroves, the fishermen had to go further in the sea for fishing. Thus fishermen are affected economically especially in the Shiyalbet village. Moreover, they claim on papers that they have adopted villages and allocate funds for welfare of the villagers, but reality is they have not even provided basic facilities to the adopted villages.

7. What is the next step you opt for?

Ans: We have filed a new case in the NGT, and we will challenge that there was contempt of court as the MoEF had to rethink on the clearance as the port has violated various EC conditions.

Interview with lawyers and activists:

I. Bhushan Oza (Lawyer at High Court):



1. Do you think judgments given by NGT are favourable to environmental protection?

Ans: I think that they do give judgments favorable to ecology; it is mainly because the benches are composed of experts both from judicial and scientific fields. It is also related to principles given by the Supreme Court which enable a more favorable awareness. On paper, courts and tribunals have good provisions, but the issue remains on the ground. Implementation is not properly done; activists could confirm my statement so we try to push the system. What needs to be understood is that NGT is a new institution, it will take time for it to improve but I think it is good that at least it exists.

Another problem is that the standards set by the GPCB are higher than international ones so it means that industries in India can reach higher pollution levels.

2. Can judgments by NGT be biased?

Ans: There are some allegations that judgments are biased because even though experts are competent, they are still part of the same system.

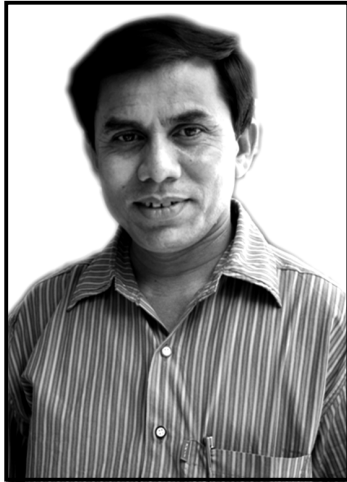
3. According to your experience, does NGT serve its purpose to give efficient and speedy judgments?

Ans: NGT is indeed very fast. It is due to its experts. In High Court, when a case is filed, judges need to gather information from experts which can take time, whereas NGT already has experts capable of the scientific parts of each case. It also relieved High Courts from a huge burden, since it took many environmental cases.

4. Do you think it is an issue that the only bench for the Western Zone is in Pune?

Ans: As a matter of fact, it is a real problem for most people. They cannot go to Pune for their cases and now there is a real demand for a bench in Ahmedabad. It is especially true since Gujarat has known a great industrial development in the past decade.

II. Mahesh Pandya (activist and director of Paryavaran Mitra)



1. What are the positive points and negative points about NGT?

Ans: High Court and Supreme Court judges are not technically sound regarding knowledge of environment. Thus this expert community helps solving environmental issues with proper knowledge and technique. NGT is good because they have both technical and legal experts. It is a speedy track, within 6-7 month they provide the judgments. People get compensation in NGT, but not in High court. NGT also has contributed 25 lakh rupees for farmers in Rajkot for the Hanjer Bio-Tec case. Whatever the decision taken by the NGT is, we can challenge it in Supreme Court. No mediator is there in NGT. It is expensive, only people who have power of paying higher fees to lawyers can afford to go to NGT.

2. Can judgments by NGT be biased?

Ans: Yes, in some cases it is biased, but it is less likely to happen because there are many members in comparison with High Court so decision has to be taken in accordance with all the members making it harder to obtain a biased outcome.

3. Do you think there is a need for NGT in Gujarat?

Ans: There should be a full-fledged bench in Ahmedabad as pollution is increasing in Gujarat and there are many chemical industries. One of the reasons why we require a bench in Gujarat is that some people may find it costly to go to Pune so they do not file the case at all, if it was in Gujarat then people would not hesitate to file the case. Even Gujarat Pollution Control Board (GPCB) is not active.

III. Shailija Pillai (Lawyer at Gujarat High Court)

1. What was the need of an NGT?

Ans: There were many environmental related cases which we have seen till today. Most of which are ignored. Less importance is given to such cases. Also there were no expert lawyers and judges who know everything about environment and many laws related to it. There are many act related with environment and many funds which have to be managed. But the general courts had not enough expertise to deal with such issues, therefore NGT came into existence. It is an act by the parliament. The main features of NGT are that it is cost effective, discusses issues within less time frame with expert people who are well aware or knowledgeable about environmental cases and various environmental issues.

Also when any environmental related case was brought forward in the High Court, the HC used to appeal the people from the Needy Organization, which is an organization that looks after various environmental issues. But they are already busy and cannot give ample time to the HC cases. Due to this, NGT was created.

2. Is it an issue to petitioners that to challenge a decision from NGT, they need to go to Supreme Court?

Ans: NGT orders can be challenged only in the Supreme Court not in the High Court. Many people cannot afford to go to Supreme Court due to high cost. In the Pune bench, the people are happy with the judgment, but the time consumption is high, expertise is low, but the work has started and progressed.

IV. Parul Gupta (Environmental lawyer)

1. Do you think NGT is qualified and efficient to protect the environment?

Ans: Yes, prior to NGT there were no experts capable of giving their expertise on environmental matters. It also enabled to relieve the burden from High Courts. I believe it helped the country by making a balance between environment and development. They apply the “sustainable development” principal and have given significant judgments.

2. As a lawyer, what were the difficulties you met in NGT?

Ans: The difficulty with NGT is that the judgment is based on scientific expertise so as a lawyer it can be a hard task. You have to show search base, it can be very long so we need to seek help from NGOs.

3. Do you think there is a good implementation of NGT judgments?

Ans: There is definitely a good implementation. Polluters have to give compensation for their faults etc. The only issue according to me is that cases judged by NGT are challenged in the Supreme Court so when the judgment is not in favor of industries, they challenge it and Supreme Court often gives judgment in their favor.

Chapter 8: Critical Appraisal of the Role of NGT: Suggestions and Recommendations

As we aware that the National Green Tribunal (hereinafter referred as NGT) has been operational in India some time ago in the field of environmental adjudication. As activist, we have been closely monitoring its operation and the trend of its working. The crux of our observations along with its suitable suggestions and recommendations for the better and effective functioning of the NGT, are herein below put forward:

1. We have observed that, in each and every clause of the National Green Tribunal Act, 2010 (hereinafter referred as NGT, Act) with regards to the establishment of the Tribunal, the word 'Central Government' reflects that the Tribunal is very much related to the Government. Whereas it is very well known fact that in India the Judiciary is separate from Legislature. But when we look at the National Green Tribunal Act, 2010, the Central Government directly as well as indirectly through chairperson runs the tribunal, which is a wing of the judicial system of our country meant for speedy, fair trial for environment cases. The appointment of judges and other judiciary members is done either by the Chief Justice of India, or the President or by consultations of both of them. Even the Consumer Protection Act, 1986, the powers to appoint judicial member/non-judicial member is vested in the central government and state government. Thus the question here is to what extent the judiciary is separate from the legislature?

Further, as per the provision of Section 6 of the NGT Act, 2010 it is mentioned that the Chairperson, Judicial Members and Expert Members of the said tribunal shall be appointed by the Central Government. Here it is pertinent to note that as the appointment of the Chairperson, as well as the members (judicial/non-judicial) is vested in the Central Government, it might be a prejudice act, because the government changes periodically and they may act according to their whims and fancies.

2. The Clause (2) of the above provision adds that, the Chairperson shall be appointed by the Central Government in Consultation with the chief justice of India. Here, the point of criticism is the word 'Consultation' because the word consultation means to just formally inform, thus the Central Government just informs/consults the Chief Justice but nowhere in the said act, it is mentioned that is the Central Government bound to act according to the view of the Chief Justice of India?

In in this context, we strongly suggest that the word 'on the basis of the Recommendation' should be substituted instead of the word 'Consultation', so that the view of the Chief Justice of India becomes binding on the Government with regard to the appointments of the Chairperson/Members (Judicial/ Non-judicial). Further, we also recommend that as there should be a selection committee for the appointment of the Chairperson and the committee should also ask for the recommendation of the Chief justice of India before the appointment of the Chairperson.

3. Our next observation is with regard to the provision of Section 6(3) of the said act, which states that the Judicial Member and Expert Members of the Tribunal shall be appointed on the recommendations of such selection Committee and in such manner as may be prescribed, whereas there is no such provision in the said act, stating how will the Selection Committee be formed? Who shall be included in the Selection Committee? What procedure the Selection Committee should follow while selecting the members, etc? Thus, we can say the said act remains silent on such important operative aspects!

Further, under Section 8 of the said act, it is stated that the judicial member and the Expert Member if wants to resign, by notice in writing under their hand addressed to the Central Government. Thus, once again here, we clearly see the dominance of the role of Central Government which comes into the picture, which may be jeopardise the autonomous nature of the very institution of NGT.

Keeping this in mind, we recommend that instead of the Central Government, let there be an independent and autonomous body which would regulate the entire procedure of appointing as well as removal of its members.

4. As we are aware, that the NGT as a Tribunal has powers of the High Court, because the cases from High Courts can be directly transferred to the NGT and further the final appeal is to be done to the Supreme Court, so indirectly it can be very well implied that the NGT a Tribunal has equivalent judicial powers like any other High Court in India, adjudicating especially in Environmental matters. Thus, our objective is to keep the institution of NGT free from government interference with respect to the composition of judicial members.
5. Next, we would also like to draw attention to the text of the provision of Section 14(1) of the said Act, which states that 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 arising out of the implementation of the enactments specified in Schedule I. In this context the word 'Implementation' can be interpreted as mandatory in nature, which puts a legal obligation on the state, thus the states are bound to perform i.e. acting in accordance as per mandate of the given environmental legislations of Schedule I. Hence, we suggest that word 'Violation' may be used instead of the term 'Implementation', so that any state if violates the said provision; cause of action can be initiated by suo motu by the NGT itself.
6. Another important concern is with regard to the issue of the Limitation Period of the NGT Act, which has emerged as a point of debate because the substances or the matters which cause environment takes time in actually affecting to the people, for e.g. it can be termed as slow poison at the initial stage

and one may not be aware of the problems affecting to the public. Only, at the later stage, after few years the problem can be identified to the public and if they move to the tribunal their application may be dismissed on the technical ground of limitation period. Thus, we suggest that the rigid approach of limitation period needs to be discarded and here more proactive and judicious approach of case based flexibility should adopted for the NGT, by making the suitable and needful legal amendment in the said Act.

Lastly, we would like to draw the attention towards the significant observations made by the Law Commission of India in its ONE HUNDRED EIGHTY SIXTH REPORT ON PROPOSAL TO CONSTITUTE ENVIRONMENT COURTS (September 2003), which recommended to start Environment Courts, but the National Green Tribunal Act, 2010 which has established “Tribunals” and not “Courts” for adjudicating the environment related cases in India.

As per the legal jurisprudence, we know that the basic distinction between tribunals and courts is that tribunals have lesser power than any courts. The courts follow formal procedure, whereas the tribunals don't. Thus, with respect to the recommendations in the 186th report of the Law commission of India, the Parliament was recommended to establish full-fledged Environment Courts and not tribunals having lesser operating judicial powers!

Important addresses:

- 1. National Green Tribunal**
Faridkot House, Copernicus Marg, New Delhi-110001
Website: www.greentribunal.gov.in
- 2. National Green Tribunal (Western Zone Bench),**
New Administrative Building, 1st Floor, B wing,
Opposite Council Hall, Pune 020-26350161

References:

Website referred:

1. www.greentribunal.gov.in
2. Website of various High Courts
3. <http://moef.nic.in/>
4. <http://rti.gov.in/>
5. http://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal
6. <http://www.cseindia.org>

"In a few decades, the relationship between the environment, resources and conflict may seem almost as obvious as the connection we see today between human rights, democracy and peace."

Wangari Maathai

***Nobel Peace Prize Winner for
her contribution to sustainable development, democracy and peace.***



National Social Watch:

National Social Watch is a broad based network of civil society organizations, citizens and communities to build a process of monitoring governance towards professed goals of social development, particularly with respect to the marginalized sections of our country. It monitors the institutions of governance and their commitment towards citizens and principles of democracy. National Social Watch aims to achieve its objectives through a comprehensive strategy of advocacy, awareness-building, monitoring, organizational development and networking. Social Watch aims at strengthening the capacity of national coalitions to effectively monitor and influence policies with an impact over women, people living in poverty and other vulnerable groups.

Gujarat Social Watch:

Gujarat Social Watch is a member of the National Social Watch, working for strengthening the governance process in Gujarat. A vibrant group of civil society members came on a platform for knowledge building, sharing and advocacy for the better governance.

Paryavaran Mitra:

Paryavaran Mitra (Janvikas) is an Ahmedabad-based non-governmental organization working on socio-environmental issues since 1997. It has been especially active in the Environment impact assessment (EIA) process giving a special focus to ensure that Environment public Hearing in the State of Gujarat are a transparent and democratic channel to voice public grievances against industrial pollution and disasters. The focus of the organization is on Social injustice, human rights violations and ecological/environmental imbalance in development projects/process and to try and resolve these issues.