

Legal Issues in ‘Environmental Protection Law’

Issue: Can the NGT take *Suo Motu* Cognizance of Cases?

Suo Motu Powers of Courts

- ❖ *Suo Motu* means ‘on its own motion’.
- ❖ *Suo Motu* jurisdiction is exercised in furtherance of powers conferred under Article 32 and 226 of the Constitution.
- ❖ **Re: Distribution Of Essential Supplies And Services During Pandemic [SMW (C) No.3/2021, Decided by Supreme Court on April 27, 2021]**

“*The reason for the intervention of this Court must, however, be understood in a proper perspective. In a time of national crisis, such as the one which is confronting the nation today as a consequence of the pandemic, the Supreme Court cannot stand silent as a mute spectator. This court has a constitutional duty to protect the fundamental rights traceable to Part III of the Constitution.*”

2

National Green Tribunal (“NGT”)

- ❖ The NGT was established on October 18, 2010, under the National Green Tribunal Act, 2010 (“NGT Act”).
- ❖ It was established for 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.
- ❖ It is guided by the principles of natural justice.
- ❖ The Tribunal has a presence in five zones - North, Central, East, South and West. The Principal Bench is located in the North Zone in New Delhi.

3

Relevant Provisions

❖ Section 14 of the NGT Act –

- *“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 arises out of the implementation of the enactments specified in Schedule I...”*

❖ Section 18 of the NGT Act –

- *“Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.”*

Relevant Provisions (Contd.)

❖ Section 19 of the NGT Act –

- *“The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure...namely-*
 - (a) *summoning and enforcing the attendance of any person and examining him on oath;* (b) *requiring the discovery and production of documents;* (c) *receiving evidence on affidavits;* (d) *subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;* (e) *issuing commissions for the examination of witnesses or documents;* (f) *reviewing its decision;* (g) *dismissing an application for default or deciding it ex parte;* (h) *setting aside any order of dismissal of any application for default or any order passed by it ex parte;* (i) *pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;* (j) *pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;*

5

Relevant Decisions and Observations

❖ ***Baijnath Prajapati v. Moef & Ors.*, [NGT Appeal No. 18/2011]**

- “...it is mentionable that we are not conferred with suo moto powers to proceed with the case...”

❖ **Environment Ministry** - “The government of India has not agreed to confer suo motu powers on the tribunal.....it is for the NGT, an adjudicatory body, to follow provisions of the NGT Act, 2010”.

❖ ***P Sundararajan v. The Deputy Registrar*, [Decided by Madras High Court (Writ Petition Nos 35098 of 2013, 2528, 3440 and 3441 of 2014 and 2266 of 2015 and WP (MD) No 2993 of 2014)]**

- 6
- “Provisions of Civil Procedure Code (CPC) are extended to the tribunal only for a very limited purpose. It is true that the tribunal is given power to regulate its own procedure and it is not bound by the strict rules of evidence. However, that would not convert the tribunal into High Court, to initiate suo motu proceedings...”

Relevant Decisions (Contd.)

❖ Some cases where NGT has taken *suo motu* cognizance of matters:

- *Tribunal at its Own Motion and Ors. v. Respondent: The Secretary Ministry of Environment & Forests and Ors.*, [Original Application No. 16/2013 (CZ)]
- *Suo Motu v. The Chief Secretary, Government of Telangana and Ors.*, [Application No. 3 of 2016 (SZ) (Suo Motu)]
- *Suo Motu v. The Chief Secretary, State of Telangana and Ors.*, [Application No. 106 of 2016 (SZ)]-
“...this Tribunal has taken up the case suo motu since it is an important issue dealing with a substantial question relating to the environment.”
- *J. Muhilan and Ors. v. Union of India and Ors.*, [Application Nos. 141, 159, 166, 167 and 187 of 2016 (SZ)]

7

Relevant Decisions (Contd.)

- ❖ ***LG Polymers India and Ors. v. Union of India and Ors.*** [Original Application Nos. 73, 19, 76/2020 (Earlier Original Application No. 68/2020 (SZ)) and Original Application No. 80/2020 (Earlier Original Application No. 73/2020 (SZ), Decided by NGT on June 1, 2020] -
 - *“NGT has the purpose and power to provide relief and compensation to victims of environment damage, restitution of property, and restoration of environment...this power includes the power to institute suo-motu proceedings and not keep its hands tied in the face of drastic environmental damage and serious violation of right to life, public health and damage to property... If NGT were powerless to institute suo-motu proceedings where so warranted, as in the present case, it would be robbed of all its efficacy...Several serious issues of environment, including air, water, soil, and other life-threatening pollution have been taken up by this Tribunal suo-motu... If even a third person claiming to be 'public spirited' can be given locus, why publicly known serious violations of environment affecting the Rule of law, human and existential rights must be objected to be protected by this Tribunal on such specious plea.... the Tribunal is not debarred from dealing with substantial issues of environment for which this Tribunal has been exclusively constituted, in absence of express statutory provision or binding judicial decision.”* (Emphasis supplied)

Relevant Decisions (contd.)

❖ ***State of Kerala v. Central Pollution Control Board* [W.P.(C) Nos. 16397 of 2020, Decided by High Court of Kerala on December 21, 2020]**

- *“...the fact that the Apex Court has admitted a few matters raising questions relating to the jurisdiction of the NGT to initiate proceedings suo motu is not an impediment for this court for deciding that question... The power to initiate proceedings suo motu is only a matter of procedure. As noted, the NGT is not bound by the procedures contained in the Code of Civil Procedure and it is free to choose and regulate its own procedure. Further, Rule 24 of the NGT Rules specifically confers discretion on the NGT to pass such order as may be necessary to secure the ends of justice....it has been held by the courts that such tribunals shall be presumed to have incidental and ancillary powers to make fully effective the express grant of statutory powers... In the circumstances, in the absence of any provision in the NGT Act precluding the NGT from exercising suo motu power for initiating proceedings...the NGT must be presumed to have the power to initiate proceedings suo motu as well, or otherwise, the victims of pollution and environmental damage, having regard to the peculiar social fabric of our country, may not have access to justice.” (Emphasis supplied)*

9

Conclusion

- ❖ The issue is yet to be decided. The Supreme Court will hear SLPs and appeals in ***Municipal Corporation Of Gr. Mumbai v. Ankita Sinha*** (Civil Appeal No. 12122/2018 and connected matters), and examine the issue on August 25, 2021.
 - It has been submitted that the NGT cannot act like a constitutional court, and a ‘lis’ must be present between two parties.
 - The Court has observed “...*The Tribunal can of course exercise only those powers which are conferred on it under the statute and which relate to the Acts in the Schedule. But to say that it has no suo motu power, that is a very wide statement. Which judgement says that the NGT cannot look into environmental problems and issues? Suo motu may also be possible... The purpose and intent of the NGT Act also has to be kept in mind. The other tribunal which you mentioned is concerned with disputes between the government and government servants and the government servants inter se. Here, the tribunal is concerned with the common man who is the victim of pollution. Why can the NGT not take responsibility and give helps to the victims?*”

THANK YOU!

Questions?

Nayantara Malhotra, Senior Associate

11

© ALG India Law Offices LLP, 2021.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2021/08/LIS-GIP-36_Nayantara_Can-NGT-take-suo-motu-cognizance-of-cases-2-1.pdf