

# **Orientation on National Green Tribunal**

Organised by  
Manthan, Kalpavriksh, SANDRP & LIFE

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Pune, Maharashtra



Mr Ritwick Dutta delivering a talk on 2 Sept 2012 at NGT Orientation at Pune, Maharashtra  
Photo : SANDRP

## **Introduction**

This Orientation program was organized on 2 September 2012 by a collaboration of four organisations - Manthan, Kalpavriksh, South Asia Network on Dams, Rivers & People (SANDRP) and Legal Initiative for Forests and Environment (LIFE) at the Indian Institute of Education in Kothrud, Pune. The location was easily accessible.

The Orientation was attended by 42 people, representatives of various environmental organizations and individual activists. There was an interesting mix of people from both urban and rural background (See the list annexed). Precursor to this Orientation, was a short and informal orientation on NGT held on 17 February 2012 in Pune with advocate Ritwick Dutta delivering the lead talk.

Shripad Dharmadhikary, founder of Manthan, crisply delivered the welcome address. The participants quickly introduced themselves as they were seated around the conference table.

## **National Green Tribunal**

The National Green Tribunal (NGT) is the country's first dedicated environmental court, set up on 18.10. 2010 by the Parliament of India and became operational from 4 July 2011. It is a multi-member judicial body and comprises of Judicial and technical members.

The NGT has jurisdiction over all civil cases where there is substantial question related to environment. It has jurisdiction over

The Forest (Conservation) Act, 1980

The Environment (Protection) Act, 1986

The Air (Prevention and Control of Pollution) Act 1981

The Water (Prevention and Control of Pollution) Act 1974

The Biological Diversity Act, 2002

(and also, The Water (Prevention and Control of Pollution) Cess Act 1977; The Public Liability Insurance Act, 1991)

Since it became operational in July 2011, the NGT has delivered significant orders/ judgments in number of cases before it. About 80 cases have been decided by NGT in the last six months. About 180 cases are currently on at the NGT.

### List of NGT Benches

The Principle Bench of the Tribunal is at New Delhi while circuit benches have been set up in Pune and Chennai and two are being set up in Kolkata and Bhopal.

The Pune bench will have jurisdiction over Maharashtra, Gujarat, Goa, Daman and Diu. The Chennai bench will have jurisdiction over Karnataka, Kerala, Tamil Nadu and Andhra Pradesh.

## **NGT Orientation Session**

Ritwick Dutta delivered a lecture in this session giving a simplified overview of the important sections in the NGT Act, more like a teacher who demystifies the language of law and gives hints at what are the most important points. He also informed that in a couple of months' time Pune will have its own bench of the National Green Tribunal functioning.

Talking about the recent rise in the number of tribunals set up in India, he said that the Green Tribunal is not really a tribunaliation of courts. One can still visit the High Court or the Supreme Court. Any of the benches can only be appealed in the Supreme Court. It is also a fact that the NGT is a civil and not a criminal court and one must not raise one's expectations in terms of action against offenders.

### NGT Act

An act to provide for the establishment of a National Green Tribunal;

- a) For effective and expeditious disposal of cases relating to environmental protection and
- b) Conservation of forests and other natural resources including
- c) Enforcement of any legal right relating to environment and
- d) Giving relief and compensation for damages to persons and property.

### The need for a National Green Tribunal

Explaining the formation of the NGT, Ritwick said it was actually the Bhopal case that triggered the formation of the National Environmental Tribunal in 1995. Also due to lack of scientific knowledge expected from the judge the need for expert members such as ecologists and scientists to assist the judge was felt. This was explained by sharing an experience from a court hearing. This was regarding a water pollution issue where the permissible levels of coliform content were on discussion. Trying to arrive at a balance between the European permissible levels of 50 and then Indian permissible levels of 5000 the court was arriving at a figure of 1000 until it had to be brought to the attention of the judge that the meaning of the word 'coliform' actually was human excreta!

There was also a report from the Law Commission of India in September 2003, as to why environment courts are required. This was under the chair of Justice M Jagannadha Rao.

### Principles followed by NGT

Ritwick Dutta also pointed out that the most significant powers of the NGT is with respect to the power to award compensation and damages to victims of environmental disasters and cost for restoration of the ecology. While passing orders, the tribunal is guided by the 'Precautionary Principle' and the 'Principles of Sustainable Development' and 'Polluter pays principle'.

## Difference between a Tribunal and a Court

The difference between NGT and a court is that, NGT is referred to as a 'creature of statute' and has a higher level. It can consider scientific and social evidence. The courts on the other hand are more narrowed down on following the procedures in the principles of law. A court, in that sense, is more concerned about the decision making process and not the merits of that decision. Tribunal can decide cases on the base of merit. Even common people can depose before the tribunal.

## The Substantial Question Relating to Environment

As per the statement of the Act, substantial question relating to environment refers to any violation of laws involved in the procedure of obtaining a Clearance. Ritwick emphasized that one must study this aspect to make an appeal before the National Green Tribunal.

Ritwick also mentioned an interesting case of Prof Bharat Jhunjunwala, retired professor of IIM and great justifier of Big Dams including Narmada who had spent all his life defending the economical benefits of dams and after retirement settled in a place near Srinagar, Garhwal, Uttarakhand, and one fine morning found that his own house is coming in the submergence of a dam! He was transformed and now greatly opposes big dams! He wrote a book on economic advantages of dismantling big dams.

Studies of cost benefit ratios as those that have been done by Prof Jhunjunwala have been found to be effective in stopping large environmentally hazardous industries.

He told about the instances where the submergence area of dams been declared forest area by MoEF.

On the other hand, Ritwick informed that India is the only country where people have the statutory right to challenge a Forest Clearance. About half a dozen judgments have been given by NGT asking for modification or additions to laws. Ritwick suggested, people must keep this progressive aspect of NGT in mind.

## Compensation cases

With reference to local communities' claiming compensation, Ritwick pointed out a successful case against the Adani Power Plant, which has to pay huge compensation for a coal-carrying ship that drowned off the coast of Gujarat. Only two such cases of compensation are at the NGT at the moment and more related cases must be presented before the Tribunal.

Riverine communities can also ask for compensation based on losses to human health. Ritwick emphasized that, having to pay the compensation serves as an admission of guilt on the part of the company and most companies would end up paying more to a lawyer to defend it than paying a smaller compensation amount.

## Overview of Important Sections of the NGT Act Covered During the Orientation

14(1) – Tribunal to settle disputes:

The Tribunal shall have jurisdiction over all civil cases where a *substantial question relating to environment* is involved.

15(1)- Relief, compensation and restitution

The Tribunal may, by an order, provide

- a) Relief and compensation to victims of *pollution* and other *environmental damage*;
- b) For restitution of *damaged property* and
- c) For restitution of the environment in such areas

16 – Tribunal to have appellate jurisdiction over

16(e) An order or decision by the State Government or other authority under section 2 of the Forest (Conservation Act), 1980 (69 of 1980); and

16(h) An order granting Environmental Clearance

17- Liability to pay relief or compensation in certain cases

17(1)- Where death of, injury to, any person or damage to any property as specified in Schedule I and Schedule II.

17(2)- Where death, injury or damage cannot be attributed to any single activity or operation but is the combined or resultant effect.

## 19- Procedure and powers of Tribunal

19(4)-The Tribunal shall have the same powers as a civil court under the Code of Civil Procedure, 1908.

19(4)(j) -To pass an order requiring any person to cease and desist from committing any violation of any enactment specified in Schedule I.

## 34- Power to amend Schedule I –

34(1) To amend schedule I by including any other Act that is enacted by the Parliament in relation to environmental protection and conservation of natural resources

## **Presentation and Discussion of Cases**

Post lunch, there was presentation by point persons for the cases described below on which there is a possibility of reaching out for judicial action by the concerned group or individual e.g. approaching NGT for relief.

The cases were discussed in detail with Ritwick and other experts for guidance. Questions from participants were addressed. Participants were encouraged to go into more details, file RTIs and prepare watertight cases for further action.

### Cases discussed with comments from Ritwick Dutta

#### 1) Lower Painganga Dam (Advocate Dhakre)(Vidharba, Maharashtra)

##### Summary:

- a) 20,000 ha of land will be submerged.
- b) 998 ha of dense forest already submerged.
- c) A petition has been filed in the High Court two years ago. There is a stay order till further decision is taken.
- d) The Environment Clearance is granted subject to the compliance to 15 conditions.
- e) Agitation from the locals has stopped further construction of the dam.

Ritwick Dutta:

- a) It is advisable to pursue the petition and approach the NGT as soon as the fresh Environmental Clearance is granted.
- b) File an RTI to find out whether the Forest Clearance has been granted by the MoEF.

2) Windmill next to Protected Area (Nana Khamkar)

(Koyna area, Maharashtra -70 km from Kolhapur)

Summary:

- a) 10 windmills have come up between 50-750 meters from the boundary of the wildlife sanctuary.
- b) The MoEF has changed the existing buffer from 1 km to an ambiguous 'safe distance'.
- c) The state is not ready to declare the area as Eco- sensitive zone.
- d) The project requires an NOC from the Forest Department (Form 15).
- e) It is causing man-animal conflicts as animals get disturbed by the noise from the windmills and go into human settlements.
- f) There are no guidelines in India for siting of windmills.
- g) There are studies showing the impacts of windmills on bats as the sound causes hemorrhage.

Ritwick Dutta:

We should find answers to the following questions.

- a) Will it cause noise/ air/water pollution in the area under Environment (Protection) Act?
- b) Is MoEF justified in using its discretionary powers to change the buffer to 'safe distance' without providing appropriate guidelines?
- c) Who is the competent authority that can take action on this?

3) Adan River dam (Dr. Nilesh Heda)

(Washim District, Maharashtra)

Summary:

- a) It is a principal tributary of the Painganga River
- b) Fish production has reduced due to hydrological impacts
- c) Locals are seeking compensation  
-Hirakud dam in context with Adan dam

- a) 140 out of 163 fish species have become extinct.
- b) Catchment is in Chhattisgarh, which has a lot of industries upstream. The pollution drawn into the water is carried to downstream areas during floods.

Suggestions from participants:

- a) Census documents can be used to highlight loss of income to fishery workers.
- b) If a study is done to survey and record the 'perception' of the villagers about the quantity of fish they perceive was harvested over the years. Using references this may then be quantified using available references.

Ritwick Dutta:

- a) Use 3-4 different cases showing the impact in the area and put together the cumulative impact.
- b) To make a case outline before presenting it along with a checklist of documents.

#### 4) Embankments (Parag)(Assam)

Summary:

- a) Embankments are constructed without any checks causing environmental damage as they are now excluded in the EIA notifications 2006.

Ritwick Dutta:

- a) To file RTI to find out what were the reasons, file noting for removing embankments from the EIA Notifications 2004.

#### 5) EIA Notifications and exclusion of dams for drinking water and industrial use in 2006 Notifications (Adv. Indavi Tulpule)

Summary:

- a) Ministry of Environment and Forests has excluded drinking water and industrial water dams in the EIA Notification 2006.
- b) Plants with capacity under 25 MW and urban water schemes have also been excluded.

Ritwick Dutta:

a) To file RTI to find out what were the reasons, file noting for removing drinking water and industrial water dams from the EIA Notifications 2006.

Pune River Restoration Plan issue by Sarang Yadvadkar and Pune Tree Act issue by Vijay Kumbhar were briefly mentioned at the Orientation.

## Organisers

**Manthan** is a policy research organisation that monitors and analyses public policy issues related to water and energy sectors.

**Kalpavriksh** is a non-profit organisation working on environmental and social issues. The group began in 1979 with a campaign led by students to save Delhi's Ridge Forest.

**Legal Initiative for Forest and Environment (LIFE)** comprises of group of lawyers working on issues of environmental democracy. It aims at creatively using the existing legal framework and institutions in protecting areas of vital ecological importance. LIFE works nationally with local groups, individuals and communities through a unique combination of investigation, information, dissemination, capacity building and supporting campaigns and movements.

**South Asia Network on Dams, Rivers & People (SANDRP)** is an informal network of organisations and individuals working on issues related with water sector with special focus on issues associated with large dams in India and regions of South East Asia.

# Programme

Sunday, September 2, 2012 from 10.00 am – 4:30 pm

10:00 am - 10:05 am: Introduction to NGT orientation (*Shripad Dharmadhikary*)

10:05 am – 10:15 am: Introduction of participants

10:15 am – 11:30 am: Overview of National Green Tribunal: Scope of Intervention and the Journey so Far (*Adv. Ritwick Dutta*)

11:30 am – 11:45: Tea

11:45 am – 1:00 pm: Discussion on Engaging with the NGT (*Moderated by Neeraj Vagholikar*)  
(*Full group discussion including Q&A.*)

1:00 pm – 2:00 pm: Lunch

2:00 pm – 4:00 pm: Presentation by participants of relevant cases and discussion of possibilities of taking up at the NGT, Pune (*Discussion moderated by Parineeta Dandekar*)

4:00 pm: Tea

4:15 pm to 5:00 pm: Presentation by Participants Continued and Conclusion

# Participants

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