



THE FINANCE ACT 2017 A BOON OR A BANE FOR THE NATIONAL GREEN TRIBUNAL

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Abstract : The National Green Tribunal was established on October 18th, 2010, with a view to take commitment at the international conference to ensure that India contributes efficiently to the improvement of the ecology and environment. The objective behind the formation of the National Green Tribunal is to provide for a specialized environmental court equipped with necessary expertise to handle multidisciplinary environmental disputes and to ensure inexpensive and easy access to environmental justice in cases of civil nature involving substantial issues relating to environment. But later with the commencement of the Finance Act 2017, many changes were brought in the composition of the National Green Tribunal which was found to curtail the independence of the National Green Tribunal which in turn effected environmental justice system of the National Green Tribunal. A tribunal must be an independent body with members expertised in the field and not made emasculated by some external authority.

IndexTerms-National Green Tribunal, inception, composition, Finance Act.

I. 1.INTRODUCTION

The concept of environment protection existed since long. In order to specifically adjudicate environmental matters the National Green Tribunal (hereinafter referred to as NGT) came into existence under the National Green Tribunal Act, 2010. The object of the paper is to stress on the formation and composition of the National Green Tribunal. It picturises as to how the National Green Tribunal has given liberal meaning and content to the statute in order to promote environmental justice, but with the Amendment of the Finance Act 2017, whether the changes acted as a boon or a bane in the functioning of the National Green Tribunal has been highlighted in this paper.

II. REVIEW OF RELATED LITERATURE

Justice Dr. P. Jyothimani,¹ in his paper has shown an evolutionary history of Environmental regulations in India. The researcher has made significant effort in elaborating the various provisions as mentioned under Schedule 1 of the National Green Tribunal, the paper summarized in brief, the origin and establishment of National Green Tribunal, its composition, jurisdiction, powers and functions.

In an article by N.S Boparai ², the editor had focussed on the fact that the amendment of the Finance Act can erode the independence of the judiciary which in turn would lessen the confidence in the public.

Ritwick Dutta,³ had brought forward the difference between the present finance Act and how far the amended finance Act had crippled NGT.

III. OBJECTIVE

To find out how far the amendment of the Finance Act, 2017 has in reality been a boon for NGT in settlement of environmental disputes beyond the orthodox Court system.

IV. HYPOTHESIS

The finance Amendment Act cripples the independence of the NGT, its efficacy is best harnessed in an environment of non-interference and autonomy.

V. METHODOLOGY

The study shall primarily be a doctrinal study based on secondary resources like research articles, judicial pronouncements, works of various eminent authors' text books, law journals, news papers etc.

VI. TOOLS

Statutory provisions, content analysis and case analysis.

VII. TECHNIQUE OF DATA ANALYSIS

Doctrinal Research

VIII. THE MAJOR FINDINGS OF THE STUDY

To critically evaluate the changes brought in the National Green Tribunal with the amendment of the Finance Act 2017.

¹ Justice Dr. P. Jyothimani, "National Green Tribunal Of India– A Historical Perspective" 1 *NGTIJE* 31-36(2014)

² N.S Boparai, "The Finance Act 2017 can erode judiciary's independence", *DNA*, Feb. 22, 2018

³ Ritwick Dutta, "How The Finance Act 2017 Cripples National Green Tribunal(NGT)", 2017, *Live Law.in*, 7th July 2017

2. INCEPTION OF THE NATIONAL GREEN TRIBUNAL

In the year 2005, the Supreme Court, in the case of *Salem Bar Association Tamil Nadu v. Union of India*⁴ highlighted that access to justice is a constitutional promise. Lord Woolf commented specialised court as a multi skilled body” and “multi-faceted acting as a ‘one stop shop’ without compromising the virtues of existing legal devices. The establishment of specialised environmental courts in India was motivated through the Green Courts in the Land Australia, New Zealand and South Whales.⁵

The National Environment Tribunal Act, 1995 existed as a legislative support to form the National Green Tribunal. The Act provided for effective and expeditious disposal of cases arising from any accident while handling any hazardous substance with a view to give relief and compensation to the victim and the environment, but unfortunately despite its successful passage through Parliament it remained unimplemented and thus the Tribunal was not constituted.

Thereafter in the year 1997, The National Environment Appellate Authority Act, 1997 (NEAA) was formed to hear appeals restricted to the areas of operation of process, industries and or not subject to safeguards under the Environment (Protection) Act, 1986. In the case of *Vimal Bhai v. Union of India*⁶ it was shown that qualified persons for NEAA could not be found and hence the post remained vacant from the year 2000 until the NEAA, 1997 Act was repealed by the NGT Act, 2010.

The 186th Law Commission Report in Chapter IX proposed that in order to lower the burden on the Courts, Environmental Courts in states must be constituted so as to be accessible to the litigants of each state. All the environmental matters were to be moved from the High Court and would be dealt in environmental Courts with the help of experts.⁷

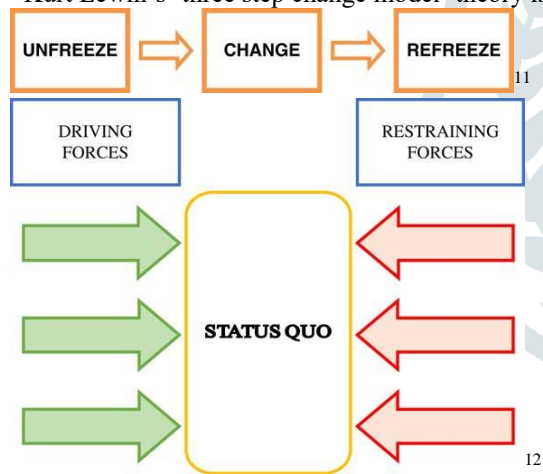
The NGT Bill was passed in Lok Sabha on 23rd April 2010 and thereafter through Rajya Sabha on 5th May 2010. On 2nd June 2010 the Bill received presidential assent.⁸ The NGT was established on 18th October 2010 and became operational on 5th May 2011 with its principal bench at Delhi and four other regional benches.⁹ In order to take appropriate measures for the protection and improvement of the human environment and in order to provide effective and expeditious access to judicial and administrative proceedings the National Green Tribunal implemented India’s commitment made at the Stockholm Conference, 1972 and the Rio Conference, 1992.¹⁰

The Principal Bench at Delhi exercises its jurisdiction in the states of Uttarakhand, Punjab, Uttar Pradesh, National Capital Territory of Delhi and Union Territory of Delhi. Subsequently regional benches were established in the central zone, Bhopal, covering Chhattisgarh, Madhya Pradesh and Rajasthan. In the western zone lies the Pune bench which covers, Maharashtra, Gujarat, Goa with Union Territories of Daman and Diu and Dadar and Nagar Haveli. The Southern Zone, located in Chennai, and serve places like Tamil Nadu, Andhra Pradesh, Kerala, Karnataka, Union Territories of Lakshadweep and Puducherry and the fifth zone is in the eastern zone located in Kolkata and is responsible for West Bengal, Bihar, Orissa, Jharkhand, and the seven sister states of the northern region, Andaman and Nicobar Islands and Sikkim.

2.1 Theory In Support Of the Formation of the National Green Tribunal

According to a theory of Theory of Kurt Lewin:

Kurt Lewin’s ‘three step change model’ theory is applied to the concept of the National Green Tribunal.



The three step change model (classic model) has continuing relevance to contemporary organizations. The theory has been applied to the National Green Tribunal, an adjudicatory body which aids in the promotion of sustainable development to help in the understanding of the new organisational reality.¹³

Force Field Theory

Lewin’s another important theory is the force field theory wherein through its practical relevance and scientific rigour analyze the changing behaviour of individuals through the operational forces in life.

In the case of *M.C Mehta v. Union of India*¹⁴, the Supreme Court of India, emphasised on the establishment of the Environmental Courts.

⁴ 2 August, 2005

⁵ Kaleeswaram Raj, “Decentralising Environmental Justice Debatng the National Green Tribunal”, 49 *EandPW*, (2014)

⁶ CM 15859/2005 in WP (C) 17682/2005

⁷ Law Commission report, 186th Report of the Law Commission on ‘Proposal to constitute Environment Court’, (2003)

⁸ Ministry of Environment, Forest and Climate Change, Government of India, National Environment Tribunal Act No 27 of (1995) also available at <http://www.envfor.nic.in/legis/others/Tribunal.html>.

⁹ Ministry of Environment, Forest, Government of India, (2011)

¹⁰ Preamble of National Green Tribunal Act, 2010

¹¹ Lewin(1947), Schein(2010)

¹² Lewin (1943)

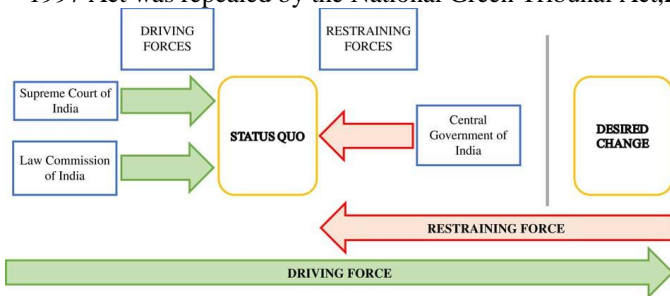
¹³ Schein (2010), pp. 299–313.

¹⁴ (1986)2 SCC 176

The proposal for the establishment of the environmental cases was supported by two other cases, they were-*Indian Council for Enviro-Legal Action v. Union of India*¹⁵ and *AP Pollution Control Board v. M. V. Nayudu*¹⁶

The dicta by the Supreme Court during this period was influenced by non-operation and non-implementation of two statutes that helped in the creation of the two specialized environmental courts, National Environment Tribunal Act, 1995 and National Environment Appellate Authority, Act 1997.

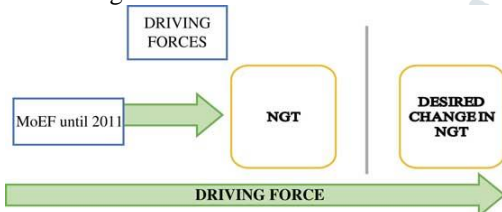
In the case of *Vimal Bhai v. Union of India High Court of Delhi*¹⁷, the posts of qualified persons in the NEAA remained vacant until the 1997 Act was repealed by the National Green Tribunal Act, 2010.



The Figure illustrates the effect of field force regarding the National Green Tribunal.

Initially the driving forces overweighs the restraining forces. Thus, the first step of unfreezing witnessed the driving forces that led to a change that would shape the future of environmental justice in India.¹⁸

The Ministry of Environment and Forests (MOEF) acted as a first driving force between 2009 and 2011. But after 2011 it became a strong restraining force.



The Government of India through MOEF introduced the NGT BILL 2010 in the Lok Sabha on 31st July 2009 as discussed in the earlier chapter.¹⁹

From 2011 onwards both the internal and the external driving forces displayed new learning in the NGT. To institutionalize the NGT the Supreme Court of India in 2012 re-engaged as an external driving force.

The Supreme Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*²⁰, transferred all environmental cases to the NGT in order to avoid any conflicts between the High Court and the NGT.

3. THE FINANCE ACT 2017

The Finance Bills are legislative proposals presented in the Lok Sabha after the budget announcement for the next financial year and before the beginning of every financial year. Financial Bills propose all the amendments to be made to various Acts in order to implement the budget in the next coming year.

On 1st February 2017, India's Finance Bill for the year 2016-2017 was presented by the Finance Minister. The Lok Sabha approved the same with some modifications on 22nd March 2017 and voted the Bill to be a Money Bill.

The Bill was sent for Presidential assent on 30. 03. 2017. The Finance Act came into effect from 1st April 2017.²¹

3.1 FINANCE ACT, 2017 EMASCULATES THE NATIONAL GREEN TRIBUNAL

The Central Government established a Tribunal to be known as The National Green Tribunal which would exercise the jurisdiction, powers and authority conferred on such Tribunal; by or under this Act.

The Tribunal shall consist of a full time chairperson,²² full time judicial magistrate of a total number of not less than 10 but subject not maximum of 20 full time Judicial Magistrate²³ and maximum 20 and not less than 10 full time expert members.²⁴ The Chairperson of the Tribunal may if consider it necessary, invite any one or more person having specialized knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.²⁵ Sub section (4), empowers the Central Government to consult with the Chairperson of the Tribunal and make rules for regulating the practices and procedure of the Tribunal including rules for appearance, hearing of applications and appeals.²⁶

¹⁵ (1986) 3 SCC 212

¹⁶ (1999) 2 SCC 718; (2001) 2 SCC 62. The first Nayudu case was in 1999 and the second Nayudu case was in 2001.

¹⁷ CM 15895/2005 in WP(C) 17682/2005.

¹⁸ Gitanjali Nain Gill, "Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?", *AJofLands*, (2018)

¹⁹ Prsindia.org (2009)

²⁰ (2012) 8 SCC 326.

²¹ Ran Chakrabarti, Anubha Sital and Shringarika Priyadarshini, "India: The Finance Act, 2017 - Implications & Constitutionality?", *Indus Law*, mondaq, 26th April 2017

²² S.4, sub clause (a) of the National Green Tribunal Act, 2010

²³ S.4, sub clause (b) of the National Green Tribunal Act, 2010

²⁴ S.4, sub clause (c) of the National Green Tribunal Act, 2010

²⁵ S.4, sub section (2) of the National Green Tribunal Act, 2010

²⁶ S.4, of the National Green Tribunal Act, 2010

Later, with the advent of the Finance Act 2017, new provisions relating to the qualification of the Chairperson and Judicial Members have been made. The introduction in these provisions have led to a major change in the composition of the National Green Tribunal. As per Section 182 of the Finance Act, 2017 Section 10A has been inserted in the National Green Tribunal Act, 2010.

The amendments that followed the Finance Act 2017 are as follows:

Amendment in the appointment of the Chairman passed by the Finance Act, 2017--

The Qualification of the appointment of the Chairman of the National Green Tribunal has been modified and revised with the passing of the Finance Act 2017. The revised qualification is as follows:

- “is, or has been, or is qualified to be, a Judge of Supreme Court; or
- is, or has been, Chief Justice of a High Court; or
- has, for a period of not less than three years, held office as Judicial Member or Expert Member; or
- is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in law including five years' practical experience in the field of environment and forests.”²⁷

“An independent and fair judicial system is important for a free society and a constitutional democracy. Since the framing of the Constitution, independence of judiciary and the doctrine of separation of powers have been of paramount importance. This is evident from the Constituent Assembly Debates wherein the need for a free and independent judiciary was considered to be fundamental for a welfare state. The father of our Constitution, Dr B R Ambedkar, during the Constituent Assembly Debates, emphasized that “there can be no difference of opinion in the house that our judiciary must be both independent of the executive and must also be competent in itself. And the question is how these two objects could be secured”.²⁸

As per the new Rule called the Tribunal, Appellate Tribunal and Other Authorities (Qualification, Experience and Other conditions of service of members) Rules 2017 (“New Rules”) an advocate with no experience in heading or being part of the Judicial Institution can be made the Chairperson of the National Green Tribunal. The Chairperson is also the administrative head of the National Green Tribunal and is responsible for dealing with day to day administrative matters. The Chairperson of the National Green Tribunal indeed plays a vital role in the judicial interpretation of the cases, he is aware of the trappings of the Court, he is a person capable of applying the principles and codes including all the powers of the Civil Court with respect matters that come before it and that is why the Parliament in its wisdom in 2010 had stipulated that the institution should be headed by an a person who is at least the Chief Justice of the High Court or the Judge of the Supreme Court.

The new Notification provide for an ‘Expert Member’ who has served for not less than three years is to be the Chairperson of the National Green Tribunal. Presently, the bulk of Expert members are retired administrators. “A situation can be created where the Judicial institutions will be headed by nonjudicial personnel with no legal background. Commenting on the suitability of Administrators as adjudicators, the Supreme Court in *Union of India (UOI) Vs. R. Gandhi*,²⁹ *President, Madras Bar Association and Madras Bar Association Vs. Union of India (UOI)*³⁰ has held that a lifetime experience may make a civil serviceman a good administrator but not a good adjudicator with a judicial temperament.³¹

As per the latest amendment of the Finance Act 2017 a person should have 25 years of professional experience in law including five years' practical experience in the field of environment and forests. But this practical experience and professional experience of ‘twenty five’ years ‘five years’ respectively is too imprecise and vague as professional experience of twenty five years doesnot mean practical experience as an advocate. Having knowledge on law or securing an administrative post in law and securing a judicial post or practical post as an advocate are different facets. The theory of separation of powers is very much important as it focuses on the different powers delegated to different authorities. Like in the case of *Union Of India vs R. Gandhi*³² the Supreme Court held that senior officers being administrative members does not necessarily make them suitable to function as Technical Members in Tribunals requiring technical expertise.”

Amendment in the appointment of the Judicial Member passed by the Finance Act, 2017

The Qualification of the appointment of the Judicial Member of the National Green Tribunal has been modified and revised with the passing of the Finance Act 2017. The revised qualification is as follows:

- “is, or has been, or is qualified to be, a Judge of High Court; or
- has, for at least ten years, held a judicial office in the territory of India;

It is pertinent to note that an Advocate has practiced for 10 years is qualified to be a High Court Judge and the revised qualifications do away with the requirement that a Judicial Member of the NGT are or were a Judge of the Supreme Court of India or Chief Justice of a High Court. Further, the term "Judicial Office" is quite wide in its connotations and can include Districts and Sub-ordinate courts as well as Appellate Tribunals.”³³

The Qualification of the appointment of the Expert Member of the National Green Tribunal has been modified and revised with the passing of the Finance Act 2017.”³⁴

Qualification of Expert Member: The new Rules severely weakened the qualifications of the Expert Member which in turn can fundamentally affect the operation of the Expert members. The purpose of establishing specialized green tribunal is to give speedy remedy related to exclusively on environmental matters based on both science and law. But, if the qualification of the members related to this judicial decision process is reduced or compromised then the purpose for which this Tribunal was established can be at risk. Thus, the reduction in qualification like Doctorate with masters in Science is now reduced to only a Degree in Science with only five years of

²⁷ S.S. Rana & Co. Advocates, “India: Central Government Notifies The Tribunal, Appellate Tribunal And Other Authorities (Qualification, Experience And Other Conditions Of Members) Rules 2017- Is This A Blatant Attempt To Curb The Functioning Of The National Green Tribunal?”, *mondaq*, 17th August 2017

²⁸ N.S BOPARAI, “THE FINANCE ACT 2017 CAN ERODE JUDICIARY’S INDEPENDENCE”, *DNA*, FEB.22,2018

²⁹ CIVIL APPEAL NO.3067 OF 2004

³⁰ WRIT PETITION (C) NO. 1072 OF 2013

³¹ Ritwick Dutta, “How The Finance Act 2017 Cripples National Green Tribunal(NGT)”, 2017, *Live Law.in*, 7th July 2017

³² CIVIL APPEAL NO.3067 OF 2004

³³ Supra note 34

³⁴ Schedule in Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other conditions of service of members) Rules 2017

experience in the field of environment has been a cause of concern for the Supreme Court. In the case of *Union of India Versus R. Gandhi*,³⁵ the Supreme Court while commenting on this aspect observed: "The speed at which the qualifications for appointment as Members are being diluted is, to say the least, a matter of great concern for the independence of the Judiciary."

4. TERM OF OFFICE-

After the passing of the Finance Act 2017, the Government notified The Rules 2017, wherein, the term of the office of the members were reduced from 5 years to 3 years. This brought in criticism. It reduced the probability of young and otherwise eligible people to join the Green Tribunal. judicial members have less expertise on environmental matters and by the time they were equipped with the issues their tenure of 3 years comes to an end.

The Supreme Court in The case of *Union of India v. R. Gandhi*³⁶ and also later referred in the case of *Madras Bar Association v. Union of India*³⁷, The ratio of the case can be said to be that the Court directed the Central Government to enhance the term of the members of the Company law Appellate Board from 3 years to 7 years. The Supreme Court in these cases was of the view that tenure of service is an important factor for the Tribunals as well in order to provide effective speedy remedy to the environmental matters.

5. COMPOSITION OF THE SEARCH AND SELECTION COMMITTEE:

Previously, the Search and Selection Committee, had Chief Justice of India, Judicial member, Secretary of Government of India as its Chairperson, Judicial Member etc. *However, with the amendment, the membership of the Committee no longer contains the Chairperson of the National Green Tribunal and a Sitting Judge of the Supreme Court, with the Chairperson of the Search-cum-Selection Committee being a Government appointee.*"³⁸

In the case of *South India Music Companies v. Union of India*³⁹ the *Madras High Court* observed that constitution of search cum selection Committee for making recommendation for appointment of members of the Board is declared unconstitutional as it comprises of the executive body.

As per the new Rule, Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, (Rules 2017) the Selection Committee to be headed by the sitting judge of the Supreme Court to be nominated by the Chief Justice has been done away with and it has been replaced by a person to be nominated by the Central Government, but no where the qualification of the person to be nominated has been mentioned. Thus, it can be presumed that any person as the Central Government may consider appropriate as a Chairperson of the Selection Committee for the selection of an Expert member can be appointed by the Central Government. In effect, it can be said that, there will be no judicial expertise in the selection of Expert members of the National Green Tribunal as it was in the Rules 2010.

Thus, the whole amendment affects the independence of the Judiciary.

However, the Supreme Court in the case of *Madras Bar Association v. Union of India & Another*⁴⁰ in the year 2021 had struck down some of the provisions of the Rules u/s 184 of the Finance Act relating to the qualification, terms and conditions of appointment and tenure of service and directed to follow the statute before the enactment of the Finance Act, 2017. The Supreme Court had also given liberty to the Union of India to seek modification of the order only after framing of fresh rules in accordance with the majority judgement passed.

This judgement of the Supreme Court creates more confusion as still the seats of NGT are lying vacant and benches except the Principal Bench are almost non functional due to infrastructural inefficiency.

6. RESULTS AND DISCUSSION

The progress of environmental jurisprudence has been increasing since long through various adjudicatory mechanisms, but non proved to be fruitful as non were constructive to deal with the environmental matter and therefore NGT was established to give a speedy and inexpensive justice, but the composition of the Tribunal under the NGT Act has faced a set back after the enactment of the Finance Act, 2017, which have hampered the independence of the judiciary. Though NGT has been made a specialised Court to decide environmental matters only, but due to the interference of the Central Government in the composition of the NGT through the amendment of the Finance Act, the NGT is unable to decide matters independently and within the specified time frame and thus, the amendment in the Finance Act has been more a bane than a boon on the NGT.

The NGT's expansionist approach has injected further rigour into its procedure that recognise that environmental considerations should be given priority in policy formulation and implementation to make NGT work independently and effectively.

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³⁵ [2010] 11 SCC 1

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³⁸ Supra note 34

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