

A CRITIQUE OF THE NGT'S RULINGS IN THE VIZAG GAS LEAK CASE VIS-À-VIS THE ENVIRONMENTAL RULE OF LAW CONCEPT

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ABSTRACT

In light of a spate of industrial accidents occurring around the country and the delay in compensating victims of such accidents, the authors felt it prudent to examine National Green Tribunal's Interim Order and Judgement surrounding the Vizag Gas Leak case from May 2020. The authors attempt to carry out this enquiry to check whether the Order and Judgement are in accordance with the principles of environmental rule of law which highlight the need for speedy and implementable justice.

I. BACKGROUND

In the early hours of 7th May, 2020, Venkatpuram village in Vishakhapatnam woke up to a deadly gas (namely Styrene) leak from the factory premises belonging to LG Polymers India Private Ltd. (“**industry**”). This unfortunate incident led to the death of 11 people and hospitalization of more than 100 people. The said industry was shut for over a month due to the corona virus induced lockdown and the incident occurred when it commenced its operations again.

The Andhra Pradesh High Court¹ (“**APHC**”) took *suo motu* cognizance of the matter. Given that styrene has been categorized as a hazardous and toxic chemical under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989² under the Environment Protection Act, 1986³, the National Green Tribunal⁴ (“**NGT**”) also assumed jurisdiction over the

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¹ *In Re. Poisonous gas leakage in Vishakaptnam v. State of Andhra Pradesh & Ors.*, 2020 SCC OnLine AP 148.

² The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.

³ The Environment Protection Act, 1986.

⁴ National Green Tribunal, *Report: In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*, available at

issue. The NGT vide its Interim Order on 8th May, 2020 (“**Interim Order**”) appointed a 6-member committee, consisting of legal and scientific experts, to ascertain the sequence of events, cause of failure, persons/authorities responsible and extent of damage to life and environment. In addition, the NGT also directed the industry to deposit Rs. 50 Cr with the District Magistrate, Vishakhapatnam.

NGT's *suo motu* powers to issue this Interim Order was challenged by the said industry in the Supreme Court (“**SC**”) on the grounds that NGT does not have powers to take *suo motu* cognizance while committees appointed by the APHC, National Human Rights Commission (“**NHRC**”) etc. are already investigating the matter.⁵ The SC, vide order dated 19.05.2020, directed the industry to raise its contentions before the NGT itself, since the matter was pending adjudication in the NGT. The matter continued simultaneously in the APHC as well. The NGT, vide judgement dated 6th June, 2020 (“**Judgement**”), decided that it has powers to take *suo motu* cognizance in this case and is empowered by statute to decide on the issue of compensation. The SC has currently stayed further proceedings in the NGT till the dispute is adjudicated by the SC.

Through this article, the authors intend to examine whether the NGT's Judgment as well as its Interim Order dated are according to the principles reflecting environmental rule of law which are described below. It is pertinent to clarify that the authors are aware that the Interim Order has merged with the judgement. However, certain important issues of law arise from the Interim Order and hence, the authors have decided to examine both the rulings.

According to the first Global Report prepared by United Nations Environmental Program of 2019, “*environmental rule of law holds all entities equally accountable to publicly promulgated, independently adjudicated laws that are consistent with international norms and standards for sustaining the planet*”. The report assesses the experiences, challenges and successes of diverse

<http://www.indiaenvironmentportal.org.in/files/file/LG-Polymers-gas-leak-report-NGT.pdf>

⁵ LG Polymers India Private Limited v. Andhra Pradesh Pollution Control Board & Ors., (2020) 6 SCC 619.

countries around the world in strengthening the environmental rule of law. As per this assessment, a fair and transparent justice system is integral in effectively enforcing environmental rule of law.⁶ It naturally follows that such a justice system must follow the principles of natural justice by providing an opportunity for all parties to be heard. *Secondly*, the court's rationale in adjudicating a dispute must be sound and consistent. *Thirdly*, the remedies provided as a result of such adjudication must be effective and achievable. Given this background, it would be important to look at the order, in an issue wise manner.

II. NGT'S JUDGMENT AND INTERIM ORDER ARE *EX PARTE* AND VIOLATIVE OF THE PRINCIPLE OF '*AUDI ALTERAM PARTEM*'

Adherence to the environmental rule of law ensues that all parties in a dispute must be given the opportunity to represent themselves and be heard. In the instant case, the NGT during the course of the first hearing only, i.e., before issuing notice to the industry, directed the industry to deposit a sum of Rs. 50 crores.⁷ The amount of Rs. 50 Cr was fixed by NGT having regard to the financial worth of the company and the extent of damage caused. It would be interesting to explore provisions of the National Green Tribunal Act, 2010⁸ ("**the Act**") from which NGT derives its powers.

Section 19 of the Act, prescribes that the NGT shall be guided by the principles of natural justice.⁹ Further, Section 19 (4) of the Act confers on

⁶ UNEP, *Environmental Rule of Law: First Global Report* (2019), available at <https://www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report#:~:text=NAIROBI%E2%80%942024%20January%202019%20%E2%80%93%20The,over%20the%20last%20four%20decades>, last seen on 25/01/2021.

⁷ Supra 2.

⁸ The National Green Tribunal Act, 2010.

⁹ S. 19, The National Green Tribunal Act, 2010:

(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

...

(4) 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, 1908, while trying a suit, in respect of the following matters, 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;

the NGT, the same powers as vested in a civil court under the Code of Civil Procedure.¹⁰ However, the same is qualified by an additional condition i.e., such an order/ judgment shall be passed only after providing the parties concerned an opportunity to be heard. Hence, the Act has categorically specified that the NGT cannot pass any orders without hearing the parties. This illustrates that NGT has not been provided with powers to pass *ex-parte* interim orders.

It is also important to peruse the NGT (Practice and Procedure) Rules, 2011 (“**the Rules**”) more specifically Rule 15 (6) and Rule 21. Rule 15(6)¹¹ stipulates that if the NGT deems fit, that it is not reasonably practicable to serve notice upon all the respondents then, it may after recording reasons, pass common orders for all respondents, provided that some respondents are in attendance. However, this is again qualified by the condition in the proviso clause that the interests of the respondents that are not in attendance, should be adequately and sufficiently represented by the

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 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;

(k) any other matter which may be prescribed.

¹⁰ *Ibid.*

¹¹ Rule 15, National Green Tribunal (Practices and Procedures) Rules, 2011:

(6). Notwithstanding anything contained in sub-rules (1) to (4), if the Tribunal is satisfied that it is not reasonably practicable to serve notice of application or appeal, as the case may be, upon all the respondents, it may, for reasons to be recorded in writing, direct that the application or appeal, as the case may be, shall be heard notwithstanding that some of the respondents have not been served with notice of the application or appeal:

Provided that no application or appeal, as the case may be, shall be heard unless-

(i) the notice of the application or appeal, as the case may be, has been served on the Central Government or the State Government or Union territory, as the case may be, if such Government is a respondent;

(ii) the notice of the application or appeal, as the case may be, has been served on the authority which passed the order against which the application or appeal has been filed; and

(iii) the Tribunal is satisfied that the interests of the respondents on whom notice of the application or appeal, as the case may be, has not been served are adequately and sufficiently represented by the respondents on whom notice of the application or appeal, as the case may be, has been served.

respondents on whom notice has been served. Further, Rule 21¹² contemplates a post-notice hearing of the case, when the respondents do not appear, where the NGT has powers to pass *ex parte* orders.

It could be argued that in light of Rules 15(6) and 21, NGT could be said to have all-encompassing powers to pass *ex parte* orders. However, it is pertinent to note that a Rule cannot be in contradiction of an Act under which it is passed and both have to be read harmoniously.¹³ Rules 15(6) and 21 merely provide for two extra-ordinary circumstances wherein NGT can pass *ex parte* orders, in order to remove practical difficulties. Even the SC has held that an order passed to the detriment of a party without notice, violates the principles of natural justice.¹⁴ Moreover, in several instances,¹⁵ the SC has by way of interim orders, while issuing notice, stayed *ex parte* interim orders passed by the NGT. The Kerala High Court¹⁶ has also held that the NGT does not have powers to pass *ex-parte* orders.

Further, the NGT judgment records that the industry has chosen not to file a reply despite an opportunity, on the pretext that they do not have access to records. However, it is pertinent to note that the APHC, vide order dated 22nd May, 2020, had directed complete closure and sealing of

¹² Rule 21, National Green Tribunal (Practices and Procedures) Rules, 2011:

(1) Where on the date fixed for hearing the application or appeal, as the case may be, or on any other date to which such hearing may be adjourned, the applicant or appellant as the case may be appears and the respondent does not appear when the application or appeal is called for hearing, the Tribunal may, in its discretion adjourn the hearing, or hear and decide such application or appeal ex-parte.

(2) Where an application or appeal, as the case may be, has been heard ex-parte against a respondent or respondents such respondent or respondents may apply within thirty days from the date of the order to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when application or appeal was called for hearing, the Tribunal may make an order setting aside the ex-parte order as against him or them upon such terms as it thinks fit, and shall appoint a day for proceeding with such application or appeal:

Provided that where the ex-parte order of the application or appeal is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also:

Provided further that the Tribunal shall not set aside ex-parte order of an application or appeal, as the case may be, merely on the ground that it was not served upon a respondent or respondents.

¹³ Anwar Hasan Khan v. Mohammad Shafi, (2001) 8 SCC 540.

¹⁴ TVS Finance and Services Ltd. v. H. Shivakumar, (2010) 15 SCC 295.

¹⁵ ECE Industries Ltd. v. State of Uttar Pradesh, Civil Appeal No. 9808 of 2018 (Supreme Court); Praharit Pigments LLP v. State of Gujarat, Civil Appeal No. 8249 of 2019 (Supreme Court).

¹⁶ KK Rocks and Granites v. State of Kerala & Ors., 2003 SCC OnLine Ker 609.

the industry. Subsequently, the SC vide order dated 26th May, 2020 allowed access to 30 personnel of the industry. One of the contentions of the industry before the SC, seeking such an interim relief, was that they needed access to their records to defend the numerous cases in an effective manner. Hence, it may be assumed that the industry could not have had any access to the records from 22nd May, 2020 to 26th May, 2020 (i.e., till the interim relief from the SC). Further, it is the contention of the industry that the report of the committee appointed by NGT was uploaded on the (NGT) website on 28th May, 2020 i.e., only four days before the date of final hearing of the matter.¹⁷ Hence, the industry argued that because of non-availability of record they could not file a response to the committee or the affidavits of the authorities (Ministry of Environment, Forests & Climate Change (MoEF&CC) and State Pollution Control Board) in the NGT.

Thus, even though the industry was represented in the NGT proceedings on the date of final hearing, the NGT judgment was passed without providing the industry an opportunity to even respond to the NGT appointed committee's report or the stand taken by the authorities. This issue has been raised by the industry as one of the grounds in the SC, in the Civil Appeal challenging the NGT judgment. Accordingly, the SC, vide order dated 29th October, 2020, provided an opportunity to the industry to file a reply to the NGT appointed committee.

III. NGT'S *SUO MOTU* COGNIZANCE: EXCEEDING THE BOUNDARIES ENVISAGED UNDER THE ACT?

The Mughal Emperor Jahangir had said that he would fasten the Chain of Justice so that an oppressed might shake it, if those engaged in administration of justice would delay or practice hypocrisy.¹⁸ The Interim Order raises the question that whether the NGT is free to shake the chain for the cause of justice on its own volition. *Suo Motu* cognizance of a case could be understood as follows: “*In a suo motu case, the adversarial frame is abandoned, the constraints of passivity are displaced by outreach and management and*

¹⁷ Supra 1.

¹⁸ *The Tuzuk-i-Jahangiri or Memoirs of Jahangir*, (A. Rogers & H. Beveridge, 2018).

instead of being separated by layers of institutional intermediaries and filters of process, there is an imperative to connect with the immediacy of events.”¹⁹

The NGT judgment has held that it has powers to take *suo motu* cognizance of a case. The NGT has inferred Section 19 of the Act to hold that it has wide powers to devise its own proceedings which includes initiating a *suo motu* case. The NGT has further held that this power is necessary when the victims are economically disadvantaged and cannot approach the court. Further, the NGT has held that Rule 24²⁰ of the Rules confers discretion on the tribunal to pass such orders as may be necessary to secure ends of justice. NGT has also held that the approach of the Court while dealing with environment issues cannot be hyper technical as it would defeat the ends of justice and rather the Court can devise its own procedure to investigate and give relief to victims in appropriate cases. The judgment goes on to add that:

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, in the face of a clear constitutional, statutory and international law mandate?²¹

The NGT concludes that nothing in the Act prohibits NGT from taking up *suo motu* cognizance. It is pertinent to note that the NGT has proceeded on the basis that it is a court, which is also evident from the judgment wherein ‘Court’ has been used interchangeably with ‘tribunal’. However, the NGT is not a court but a tribunal. Tribunals derive their powers to take *suo motu* cognizance from their respective parent statutes. For instance, the NHRC derives its power to take *suo motu* cognizance by virtue of section 12 (a) of the Protection of Human Rights Act, 1993²² but there is no similar statutory provision to empower NGT. A section empowering a tribunal to

¹⁹ G. Marc & V. Ram, *Suo Motu Intervention and the Indian Judiciary*, 92-122 (G.N. Rosenberg & S. Krishnaswamy).

²⁰ *Supra* 11, Rule 24.

²¹ *Supra* 2.

²² S. 12, The Protection of Human Rights Act, 1993:

The Commission shall perform all or any of the following functions, namely:

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of
 (i) violation of human rights or abetment thereof; or
 (ii) negligence in the prevention of such violation, by a public servant;

regulate its own procedure is a general power and could be found in parent statutes of other tribunals as well. However, courts have held that such Sections providing general powers to a tribunal to regulate its own procedure do not include *suo motu* powers.

For instance, the Debt Recovery Appellate Tribunal (“DRAT”)²³ as well as the Delhi High Court²⁴, while deciding if DRAT has *suo motu* powers, interpreted Section 22(1) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (which states that the Debt Recovery Tribunal (“DRT”) and the DRAT *shall have powers to regulate their own proceedings*), held that such a Section cannot be expanded to state that DRT/DRAT have *suo motu* powers. Tribunals are creations of a statute and it is not open for them to travel beyond the provisions stipulated therein.²⁵

NGT through the judgment, by stating that it has powers to take up *suo motu* cognizance of a case, has attempted to uphold the Rule of Law by increasing access to justice. However, as per the Indian law, tribunals are bound by certain limitations. The SC, while issuing notice in *Central Electric Supply Utility of Odisha v. Government of India*, concerning the issue whether NGT has powers to take up *suo motu* cognizance, had stayed the NGT's Interim Order and the said case is currently pending adjudication in the SC.²⁶ Be that as it may, the SC will now have to conclusively adjudicate this issue and give it some finality.

IV. CONCLUSION

Given the above-mentioned observations, the authors humbly opine that the NGT's Judgment may not pass the muster of environmental rule of law on the issue of principles of natural justice. In the recent past, numerous NGT orders have been challenged and set aside in the SC²⁷ for being in violation of principles of natural justice. Such situations could be averted if the NGT exercises caution while adjudication. An order passed

²³ Bhangoo and Co. v. Mittal & Garg Enterprises & Anr., 2005 SCC OnLine DRAT 72.

²⁴ Padam Singhee & Ors. v. SVOGL Oil, Gas and Energy Ltd. & Ors., (Delhi High Court, 18/08/2018).

²⁵ D Ramakrishna Reddy v. Addl. Revenue Divisional Officers, (2000) 7 SCC 12.

²⁶ Central Electric Supply Utility of Odisha v. Government of India, Civil Appeal No. 5902 of 2019 (Supreme Court, 05/08/2019).

²⁷ Supra 10.

by NGT in violation of the Act and against the tenets of the environmental rule of law could be interfered with by the superior courts thereby delaying the cause of environmental justice. In environmental cases, delay in justice could lead to irretrievable loss to the environment and life.

Further, by deciding that it has powers to take up *suo motu* cognizance of a case, NGT has upheld the environmental rule of law by increasing access to justice. However, because of ambiguity in the Act and Rules coupled with the legal limitations of a tribunal, it is imperative that either SC adjudicates this issue or the legislature amends the Act to bestow such powers on the NGT. Given the flurry of industrial accidents that have arisen post lockdown and their negative impact on people as well as environment,²⁸ it is important for environmental cases to be dealt with in an efficient manner, so as to avoid prolonged litigation and provide justice to the victims at the earliest.

²⁸ *Post lockdown, industrial accidents have killed 75 people in India: Global workers' union*, The Hindu Business Line (07/07/2020), available at <https://www.thehindubusinessline.com/news/post-lockdown-industrial-accidents-have-killed-75-people-in-india-global-workers-union/article32014407>, last seen on 25/01/2021.