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### SUPREME COURT UPHOLDS THE POWER OF NATIONAL GREEN TRIBUNAL TO TAKE SUO MOTU COGNIZANCE OF ENVIRONMENTAL ISSUES

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#### **Introduction**

In a recent decision of *Municipal Corporation of Greater Mumbai v Ankita Sinha & Others*, a three judge bench of Supreme Court of India held that the National Green Tribunal (NGT) has power to take *suo motu* cognizance of environmental issues, even though the National Green Tribunal Act, 2010 (NGT Act) does not expressly provide the NGT with power to take *suo motu* cognizance. The judgment was rendered in a batch of connected matters with the same issue - whether the NGT has the power to exercise *suo motu* jurisdiction in discharge of its functions under the NGT Act.

The Court ruled that the NGT, which safeguards the right to life under Article 21 of the Constitution of India, "*even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.*" At the same time, it clarified that NGT's *suo motu* jurisdiction would be subject to the principles of natural justice and fair play - before passing an adverse order, an opportunity of hearing should be provided to a party that is likely to be affected by NGT's order.

This article provides a quick snapshot of the Supreme Court's verdict.

#### **Summary of Arguments Advanced**

Essentially, the arguments advanced in opposition to NGT's *suo motu* jurisdiction are clubbed under three broad heads - (1) NGT is creature of a statute and in the absence of express jurisdiction of such import, none could be conferred on it; (2) NGT's jurisdiction relates to disputes between parties, indicating adversarial pre-condition for its invocation/trigger; and (3) NGT does not have the general wide power of judicial review akin to the writ courts under Articles 32 and 226 of the Constitution of India. The arguments advanced in support of NGT's *suo motu* jurisdiction were not specifically summarised in the judgment.

#### **Supreme Court's Decision**

The Supreme Court methodically analysed the legislative intent, the objects and reasons for establishment of NGT in India, and purposively interpreted the statutory provisions of the NGT Act in light of underlying principles of environmental justice and equity to expound its conclusion in this judgment. The Supreme Court also noted international discourse around environmental issues and NGT's specific role in development of environmental law in India.

The Court held that since NGT is set up to enforce the fundamental right to life enshrined in Article 21 of the Constitution in the context of environmental issues and has special jurisdiction for enforcement of environmental rights, the legislature conceived the mandate and jurisdiction of the NGT to be one of the widest amplitude. Therefore, the provisions of the NGT Act must be purposively read with the intention to accentuate them.

In this light, the Court analysed scheme of the NGT Act and the attendant rules to conclude that the legislature vested *suo motu* jurisdiction of wide amplitude akin to writ courts in NGT, but limited it to the sphere of environmental issues under Article 21. The Court explained *sui generis* role of NGT in delivery of environmental justice and its distinct status as compared to other statutory tribunals.

It noted that NGT's powers are of wider amplitude than mere adjudication of disputes by two rival parties. The use of term "*to secure ends of justice*" under Rule 24 of National Green Tribunal (Practice & Procedure) Rules, 2011 (Rules) indicates that NGT has been given wide discretionary power to secure justice, which is followed by the duty to exercise this power for achieving the objective. The power also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to environmental principles and hauling up authorities for inaction, when need be. Under the NGT Act, conferment of wide powers on *locus standi* (similar to that of writ courts), and the power to mould relief even if not specifically prayed for by a party indicate that powers of wider amplitude are vested in NGT.

The Court held that NGT is vested with "*non-adjudicatory powers*" as well. From the very inception, the role of NGT was to also perform equally vital roles that are preventive, ameliorative or remedial in nature to do complete justice in its environmental mandate. However, the Court has cautioned that this expansive power does not mean that restricted "*merits review*" or other statutory limitations on powers would be inapplicable.

It was further observed that the NGT is armed with "*self-activating capacity*" under Section 14(1) of the NGT Act which suggests that an application is not necessary to trigger NGT's jurisdiction in action. In situations where the three prerequisites of Section 14(1) are satisfied, *viz.*, no civil cases, involvement of substantial question of environment, and implementation of the enactments in Schedule I, the jurisdiction and power of NGT gets activated.

In addition to above, use of term "*decision*" in addition to "*award*" or "*order*" under Section 20 of the NGT Act indicates the wide amplitude of NGT's jurisdiction while applying the "*precautionary principle*".

Lastly, the Court also delved into the relevance and importance of environmental justice and equity in India. Even when it is not feasible for individuals to initiate action before NGT due to lack of means to access justice, their rights may not be curtailed. NGT's affirmative role, beyond mere adjudication at the instance of an applicant, is thus held to be certainly required for serving the ends of environmental justice.

As procedural safeguards, the Court observed that while initiating *suo motu* action, the NGT would be required to send a notice to the sender of a letter or author of a media report on which the action is based. Further, a party likely to be affected by such action ought to be given due opportunity to present its case, before suffering adverse orders.

## Conclusion

The Supreme Court's judgment settles and defines the contours and scope of NGT's jurisdiction to consider environmental issues *suo motu*. The adoption of purposive interpretation to 'unshackle' the specialised tribunal in protection of environmental

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justice and equity, has been balanced with defined safeguards by the Supreme Court. It is categorically held that when the NGT is legitimately working within the contours of its statutory mandate and with procedural safeguards, the nature of the trigger viz. a letter or a *suo motu* initiation, cannot be the basis to curtail the role and responsibility of the specialized forum. The Court has however, clarified that in exercising *suo motu* jurisdiction the NGT shall be bound by the principles of natural justice and fair play.

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