

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 3
2025

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Indian Oil Corporation Limited v. V. B. R. Menon and Others, 2023 SCC OnLine SC 257: Case Commentary

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ABSTRACT

In the case of Indian Oil Corporation Limited v. V.B.R. Menon & others, 2023, the Supreme Court of India analyzed the scope, authority and power of the National green tribunals. In present case an appeal was directed to challenge the order of the NGT which directed petroleum retail outlets to obtain Consent to Establish (CTE) and Consent to Operate (CTO) from pollution control authorities. The NGT's intention was to ensure compliance with the vapour recovery system, but the Supreme Court found that imposing CTE/CTO on petroleum retail outlets was beyond the ambit of the NGT. It was further held that according to CPCB's own guidelines, petroleum outlets are treated on par with "green category" industries and are thus exempt from obtaining such consents. The Court upheld installation of VRS but struck down NGT directions on CTE/CTO thereby reaffirming the primary role of CPCB as far as the regulation is concerned. Thus, the judgment seeks an appropriate balance between environmental caution and procedural safeguards, which also speaks about reinforcing the supremacy of statutory mechanisms. The judgment further clarifies the extent to which the NGT can exercise its powers under the Environment (Protection) Act, 1986 and the NGT Act, 2010.

Keywords: NGT, Consent to Establish, Consent to Operate and Vapour Recovery System

I. FACTS

Mr. V.B.R. Menon, a Chennai resident, raised a matter before NGT, Chennai, against the oil marketing companies for their failure to install vapour recovery systems (VRS) at the petroleum outlets. In this application, the petitioner prayed that the defendant oil marketing companies be directed to install and run vapour recovery systems, Stage 1 and 2, in satisfactory working condition, not only prior to opening and commissioning of any new petroleum retail outlets in Tamil Nadu but also for all the currently existing petroleum outlets in Tamil Nadu, and for the Hon'ble Tribunal to prescribe a time schedule for each city, town, and rural area located in Tamil Nadu. The foundation for this application lay in the order

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passed by the principal NGT bench requiring, for all of Delhi's fuel stations, distribution centers, terminals, railway loading/unloading facilities, and airports, the installation of stage I and II vapour recovery devices (VRD). NGT, Chennai issued orders directing the installation of VRS Mechanisms. It also laid down, however, that the CPCB and SPCB's should issues a directive making it mandatory for all these entities to take consent to set up and consent to operate for new petroleum outlets to be set up in the future as well as all existing retail outlets without any exception regarding their gross turnover to obtain the consent to operate within 6 months. The Appellant has thus presented the current appeal, not very happily.³

II. ISSUES RAISED

The main issues in this case were that –

1. Does the NGT have the power to direct CPCB to exercise its jurisdiction under Section 5 of the Act 1986?
2. Can it direct CPCB to require all petroleum retail establishments nationwide to obtain the CTE and CTO mandatorily?

III. SUBMISSIONS ON BEHALF OF APPELLANT

- Appellant's counsel contended that they only challenge directions ordered in Para 69(iii) and Para 69(iv)⁴ which is related to obtain CTE and CTO. They confirmed that they do not challenge the directions issued in Para 69(i) and 69(ii) of impugned order which is about installation of VRS.
- They submitted that directions issued in Para 69(iii) and Para 69(iv) are purely legislative in nature, these directions making CTE/ CTO mandatory is amounting to enacting a law as judicial order. Also, that there is no rational ground to issue such directions and therefore it is beyond the jurisdiction of NGT.
- According to the reclassification of industries done by CPCB, petroleum retail outlets are within green zone of industry & as per rules industries falling in green zone does not require CTO or CTE. Thus, directions given in impugned order conflict with the rules of classification of industries.
- They also argued that process of setting up of Retail outlets already requires several approvals from different authorities like, PESO, NHAI, RFO, DM. These formalities

³ Indian Oil Corporation Limited v. V. B. R. Menon and Others, 2023 SCC OnLine SC 257

⁴ V.B.R Menon v state of T.N. 2021 SCC OnLine NGT 3583

almost take 120-240 days. In such circumstances making it compulsory to obtain CTO and CTE would cause delay in setting up of ROs.

- In 2019 NGT passed an order in *Gyanparkash v Union of India*⁵. In the case guidelines were issued for setting up of new petroleum pumps. Learned counsel contends that guidelines are exhaustive in nature and once these are fulfilled there is no need to obtain CTO/ CTE.

Thus, Appellants pray that directions issued by NGT in Para 69(iii) and Para 69(iv) must be set aside.

IV. SUBMISSIONS ON BEHALF OF RESPONDENT 2- ORIGINAL APPLICANT BEFORE NGT

- The counsel on behalf of Respondent 2 submitted that NGT while issuing the impugned order of 23.12.21 made no error or to say there is no error of law.
- Also, Appellant has filed appeal under S.22 of NGT ACT, 2010 and as per rules S.22 is restricted to substantial question of law⁶. In the present appeal there is no substantial question of law involved.

Thus, learned counsel of Respondent 2 contends that appeal should be dismissed as there is no merit in present case.

V. SUBMISSION ON BEHALF OF RESPONDENT 1- CPCB

- Mr. Tushar Mehta learned counsel on the behalf of Respondent 1- CPCB submitted that the NGT did not need to issue the contested directives as stated in paragraphs 69 (iii) and 69 (iv), especially considering the “comprehensive guidelines issued by the CPCB in the Office Memorandum dated 07.01.2020”.
- They submitted that only goal for making CTO/CTE Compulsory is to make sure that all Retail outlets adhered to regulations issued by CPCB.
- CPCB has ensured that all SPCB keep strong see on ROs across nationwide so that all outlets follow the guidelines.
- They submitted that now asking all current ROs to obtain CTO is irrational, time consuming, and requires a lot of paperwork.

Thus, they lastly contended that about directions in Para 69(i) and Para 69(ii) are concerned,

⁵ *Gyanparkash v Union of India*, 2019 SCC OnLine NGT 619

⁶ National Green Tribunal Act, 2010 § 22

they are true and all SPCB shall ensure that these guidelines are followed by RO and CPCB shall also ensure that all SPCB adhered to the rules provided by them and in case of any lapse, necessary action shall be taken as per the procedure of the law.

VI. CRITICAL ANALYSIS

This judgment makes practical efficient environmental legislation the top priority. The decision endorses environmental safety goals but states that operational feasibility requirements must play a role in every environmental protection step. The court maintains its system to protect the environment through business-focused conditions by setting standards with penalties for organizations that do not comply.

Through this court decision a valuable framework appears for green governance which proves sustainable results can occur with reasonable and unsubstantiated limitations. Successful businesses must unite all stakeholder groups including industrial sectors together with regulatory bodies and other interested components when designing economic solutions which fulfill environmental sustainability targets. An organization requires a complete approach embracing sustainable growth that sustains over time.

The court examined the power of the NGT to initiate directives toward Central Pollution Control Board (CPCB) personnel and its representatives. The court stated that Central Government entities have the power to perform necessary environmental protection tasks and issue directives under the Environment (Protection) Act, 1986 by Section 3 and Section 5⁷. Under NGT Rules of 2011 specifically Rule 24 the watchdog possesses broad discretion to issue directions which maintain justice together with protection against procedural abuse. In the *Municipal Corp., Greater Mumbai v. Ankita Sinha*⁸, the court explained during the Ankita Sinha case that the NGT has complete authority to develop remedies together with environmental rights enforcement and authority oversight despite lacking specified party⁹ requests.

The court described concepts pertaining to Consent to Establish (CTE) and Consent to Operate (CTO). The Pollution Control Board needs to grant CTE permission as the first step for building a retail petroleum outlet since this step considers environmental hazards together with groundwater quality standards. The CTO certification becomes effective following building completion to ensure environmental protection before operations begin. The court adopted the CPCB standards that prescribe procedures for petroleum pump installation within

⁷ Environment(Protection) Act, 1986 § 5

⁸ *Municipal Corp, greater Mumbai v Ankita Sinha*, 2021 SCC Online SC 897

⁹ *Gyanparkash v Union of India*, 2019 SCC OnLine NGT 619

its Office Memorandum dated 7-1-2020.

The main judicial question revolved around whether the NGT possesses authority to instruct the CPCB about implementing CTE and CTO procedures for retail petroleum stations. The NGT established a requirement for Vapour Recovery Systems (VRS) at all petroleum pumping stations serving cities bigger than 10 lakhs in population and generating revenue above 300 KL per month. The National Green Tribunal directed VRS installation monitoring using CTE and CTO for new retail petroleum outlets in its circulars.

Under the CPCB's guidelines dated 30-4-2020 and 7-3-2016 the oil business sector belongs to the "green category" that does not come under consent management regulations. The court established that environmental protection requirements function effectively with proper enforcement making CTE and CTO unnecessary according to the NGT directives. VRS installation authorities still rested with the NGT but the order to obtain CTE and CTO proved impossibly strict for retail petroleum stores. Following a court order the CPCB received the responsibility to guarantee strict adherence to its recommendations while denying implementation of NGT directives found in paragraphs 69(iii) and 69(iv) of the contested order.

The court declared that forcing existing outlets to acquire CTO would create unnecessary burdens and proved difficult for all new outlets to meet. Following the appeals the court required CPCB to properly execute the VRS installation timetable and deliver directions to State Pollution Control Boards (SPCBs) regarding the enforcement of Office Memorandum rules from 7-1-2020. All outlets found violating these rules would face legal consequences. The court reaffirmed the importance of using present CPCB guidelines for environmental protection yet maintained the authority of the NGT to issue environmental directives before amending the judicial decision to eliminate mandatory CTE and CTO.

VII. JUDGMENT

The court in the present case **emphasizes on the purpose for the establishment of NGT**. Court stated that -A National Green Tribunal for environmental protection and natural resource conservation is intended to be established by the NGT Act of 2010. As a signatory to the 1992 United Nations Conference on the Human Environment, India demanded access to national laws pertaining to culpability and compensation for victims of environmental & population damage, as well as to judicial and administrative actions. It is necessary to implement these rulings and create a National Green Tribunal "as the right to a healthy environment is interpreted as a component of the right to life under article 21 of the

Constitution”.¹⁰

With the ability to decide civil disputes concerning environmental issues, provide relief and compensation to victims of pollution, and compel the return of property destroyed by pollution, the National Green Tribunal (NGT) in India possesses both original and appellate jurisdiction. A person in favor of an award or order has two options if it is not followed: they can request that the award be executed under Section 25¹¹ or they can request that offenders be prosecuted in a criminal court under Section 26.

Section 33 of the NGT Act¹² also grants any other law the overriding effect. It deals with implicit repeal and repeals the “National Environment Tribunal Act of 1995 and the National Environment Appellate Authority Act of 1997”. Both the authority to execute the award independently and the authority to transfer the award to a civil court for execution are granted by the NGT Act.

Section 26 stipulates that noncompliance with NGT awards carries a three-year jail sentence, a ten-crore rupee fine, or both¹³. Every business, individual directly in control of the business's operations, and even government departments are subject to prosecution and punishment as a result.

Under the NGT Act, Section 5A was added to Act 1986¹⁴. This clause gives the Central Govt. power to order the shutdown of the water or electricity supply, as well as the closure, prohibition, or restriction of certain industries. This implies that the NGT has the authority to dispute directives issued by the Central Government.

After providing basic introduction about powers of NGT.

The first question before the court was that whether NGT possess the authority and jurisdiction to give directions to CPCB and its delegates?

Court refereed Section 3 and 5 of 1986 Act which empowers CG and its delegates to take any such measures necessary for the purpose of protecting the environment and issuing any directions for achieving objectives of the act respectively. CG has also “framed the National Green Tribunal (Practices and Procedures) Rules, 2011 (for short, ‘the NGT Rules’)., Rule 24 is important which reads thus”:

“Rule 24. Order and directions in certain cases. — The Tribunal may make such orders or

¹⁰ India Const. art.21

¹¹ National Green Tribunal Act,2010 § 25

¹² National Green Tribunal Act,2010 § 33

¹³ National Green Tribunal Act,2010 § 26

¹⁴ Environment(protection) Act, 1986 § 5A

give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.”

This rule went for clarification in the case of “Municipal Corp, Greater Mumbai v Ankita Sinha”¹⁵- which held that In order to uphold justice and protect the environment; NGT has broad discretionary authority. Beyond making decisions, it also advances environmental rights, provides compensation, develops plans, and holds authorities responsible. Even if the parties do not expressly seek it, the NGT has the authority to shape relief. Effectively carrying out its mandate depends on its ability to take Suo motu cognizance of things. To preserve environmental rights, the NGT must also implement the precautionary principle; the polluter pays concept, and the sustainable development principles.

Court in the judgment also explains the “concept of Consent to establish and consent to operate.”

Consent to establish means to build a Retail outlet station; the pollution control board must first grant consent to establish (CTE), considering environmental hazards, residential and school accessibility, and ground water quality. A certificate known as CTO is granted following establishment of retail petroleum stores, guaranteeing adherence to regulations and environmental protections. The Pollution Control Board issues it to guarantee soil, ground water, and air safety.

Court in its judgment also incorporated and **relied on the regulation issued by CPCB in its Memorandum dated 7-1-2020 for setting up of new petroleum pumps.**

Petroleum refineries (RPs) in cities having a population of >10 lakhs & a monthly turnover of more than 300 KL were directed by the National Green Tribunal (NGT) to install Vapour Recovery Systems (VRS) and Vapour Recovery Devices (VRDs). Concerned about the stringent oversight of VRS installation, the NGT, Chennai, released circulars requiring the acquisition of CTE and CTO as a prerequisite for opening new gas stations.

It is important to note that court relied on the directions given by CPCB dated 30.4.20 and 7.3.16 in which oil industry is characterized under “green category” and as per directions green categories industry does not require CTE and CTO. Court believed that because the NGT was concerned that the State Pollution Control Boards might not be closely monitoring the installation of VRS, it directed the CPCB and SPCBs to issue a circular requiring the CTE and CTO as a prerequisite for opening new outlets.

¹⁵ Municipal Corp, greater Mumbai v Ankita Sinha, 2021 SCC Online SC 897

The court decided that **getting a CTE and CTO is not required to establish or run a RO.** Rather, the court overturned the NGT's directives and instructed the CPCB to guarantee rigorous respect to the rules. Thus, court set aside the direction issued by NGT in impugned order as contained in Para 69(iii) and 69(iv) and direct CBCB to direct all SPSB to ensure guidelines issued dated 7.1.20 are adhered strictly. **Therefore, the terms also apply to all other related appeals.**
