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# Single Member Bench of the National Green Tribunal: A Successful Experiment or a Failure?

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## ABSTRACT

*The National Green Tribunal is a specialized body established in 2010 for protecting the environment, forest and other natural resources. In its fourteen years of existence, the NGT has witnessed ebb and flow but ensured to achieve environmental justice by protecting the legal rights relating to the environment and giving relief and compensation to persons and property. However, its environmental activism liked by the few and the executive time and again attempted to dilute the NGT Act, 2010 whether it was objecting NGT's suo motu jurisdiction, allocating less budgetary allocation affecting the infrastructural facilities, lack of willingness to fill the vacant positions of judicial and expert members, controlling appointments, salary, terms and conditions of services through Finance Act, 2017 etc. Now in this list another challenge was put forth before the Green Tribunal i.e., Constitution of its single member bench by the Ministry of Environment, Forest & Climate Change in December 2017. This development came to tackle the crisis of existing vacancies of judicial and expert members in the different zonal benches of NGT and ensure functioning of the tribunal bypassing the provisions of the NGT Act, 2010 which requires at least two members of judicial and expert members to hear the environmental disputes. Therefore, in the light of the above development, this paper attempts to analyze the intentions of the Central Government to form a single member bench whether in consonance with the NGT Act, 2010 or not. Moreover, it will examine the role played by the Supreme Court of India in examining the validity of the amendment on establishing a single judge bench to check whether it exceeded or was within the permissible limits of the parent statute and to finally look towards its outcome.*

**Keywords:** National Green Tribunal, Single Member Bench, Central Government, Supreme Court of India, Environmental Justice.

## I. INTRODUCTION

The National Green Tribunal (NGT) came as a hope for the well-wishers of environmental justice who have witnessed the environmental degradation and its destruction due to the absence

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of a specialized body for environment adjudications in India. The efforts to establish Environment Courts can be witnessed from the 1980s when major industrial accidents like *Oleum Gas Leak* and *Bhopal Gas Tragedy* have occurred which not only became a mass disaster but deteriorated the environment adversely. The Parliament established the NGT with a lot of expectations and applause with a hope that international obligations under Stockholm, Rio and constitutional mandates can be achieved to secure and protect an environment for the present and future generations.

Unfortunately, even after setting up of NGT, to achieve the aims and objectives of the NGT Act, 2010 (NGTA) there were various hurdles that came from the Central Government which had the ambition to fulfill the promises of economic development for the people who voted for a progressive India. However, progressive India also contains in it the environment protection which must be remembered while approving any project in the name of development. Since the beginning of NGT's establishment, it has the agenda of judicial environmental activism to secure environmental justice but the Ministry of Environment, Forest & Climate Change (MOEF&CC), Government of India wasn't happy with its pro-environment approach against which it showed the outrage in its fourteen years of establishment by not providing adequate infrastructure, appropriate budgetary allocation, objecting its suo motu jurisdiction, not appointing judicial members, expert members and staff members affecting tribunal's functioning and also tampering the appointment procedure of presiding members, their salary, terms and conditions of services by introducing the Finance Act, 2017 etc. Further, the Central Government didn't stop there and to tackle the vacancies in appointment instead of filling the backlog of vacancies it came up with an amendment in the proviso of the NGT (Practices and Procedure) Amendment Rules, 2017<sup>2</sup> set up a single member bench of NGT in order to continue with the cases and bypassed the NGTA which mandates to preside over the cases when there are at least two members in the bench i.e., the Judicial and Expert member to adjudicate the environment dispute.

From the above-mentioned discussion, now it becomes necessary for the author to examine the need for legislating a different rule on the constitution of the single member bench of NGT in exceptional circumstances. Finally, what role the Indian judiciary played to resolve the conflict/chaos arise due to the executive action which bypassed the law laid down under the parent statute i.e., the NGTA which mandated at least two members be presided over by a bench. Hence, the mandate of the parent statute makes this situation significant to study the need and

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<sup>2</sup> Ins. by G.S.R, 1473 (E), dated 1st December, 2017 (w.e.f. 1-12-2017).

intent of the executive to set up a single member bench of the NGT.

The author will be discussing the paper in the following parts for the better understanding of its readers which is as follows: i) National Green Tribunal; ii) Formation of NGT Benches; iii) Constitution of Single Member Bench, NGT; iv) Reported cases dealt by NGT's single member bench; v) Supreme Court's approach on the Single Member bench of NGT; and vi) Conclusion. Let's start the discussion by giving a brief overview of the NGT followed by building our argument regarding the NGT's single member bench.

## II. NATIONAL GREEN TRIBUNAL

On 18th October 2010, the NGT under the NGTA came into existence<sup>3</sup> as an element of 'reformist approach' by scrapping the obsolete and utter legislative miseries i.e., National Environment Tribunal Act, 1995<sup>4</sup> (NETA) and National Environment Appellate Authority Act, 1997<sup>5</sup> (NEAAA) by the Parliament for the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property<sup>6</sup> and for matters connected therewith or incidental thereto.<sup>7</sup>

Without mentioning the Indian Judiciary's effort, the discussion of NGT is immaterial because the Supreme Court of India (SC) acknowledged the complex nature of environmental litigation<sup>8</sup> in *M.C. Mehta v Union of India*,<sup>9</sup> *Charan Lal Sahu v Union of India*,<sup>10</sup> *Indian Council for Enviro-Legal Action v Union of India*<sup>11</sup> and *A P Pollution Control Board v M V Nayudu*<sup>12</sup> and has recommended setting up a specialized Environment Courts at the National, State and Regional Levels with a need for scientific and technological expertise as an essential input to inform judicial-decisions.<sup>13</sup> The recommendations of the SC to set up a "multi-faceted" Environmental Court was articulated in the 186th Law Commission of India Report titled

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<sup>3</sup> Rasheed Shaikh, 'National Green Tribunal: A Dispute Resolution Mechanism in Protecting Environment' (2017) 2(2) International Research Journal of Socio-Legal Studies 3.

<sup>4</sup> Satish C Shastri, *Environmental Law* (4th edn, Eastern Book Company 2012) 170.

<sup>5</sup> Tony Philip and Anu Maria Francis, 'The Late Born Child is a Cripple: A Critique on the National Green Tribunal Act, 2010' (2010) 4 NUALS Law Journal 125.

<sup>6</sup> Shastri (n 3) 171.

<sup>7</sup> Manoj Kumar, 'Role of National Green Tribunal in Environmental Protection' (2018) V NUSRL Journal of Law & Policy 4.

<sup>8</sup> Paramjit S. Jaswal, Nishtha Jaswal and Vibhuti Jaswal, *Environmental Law* (5th edn, Allahabad Law Agency 2021) 417.

<sup>9</sup> 1987 SC 965.

<sup>10</sup> AIR 1990 SC 1480.

<sup>11</sup> (1996) 3 SCC 212.

<sup>12</sup> AIR 1999 SC 812.

<sup>13</sup> P Leelakrishnan, *Environmental Law in India* (2nd edn, LexisNexis Butterworths India 2005) 269.

“Proposal to Constitute Environment Court” which was published in September 2003<sup>14</sup> and made it the third country<sup>15</sup> after Australia and New Zealand to establish a specialized Green Court in India to deal with environmental related litigations<sup>16</sup> which are burdening the SC and High Courts (HC) of India with backlog of cases. The NGT’s empowerment is based on the decisions of the Stockholm Conference, 1972<sup>17</sup> and Rio Declaration, 1992<sup>18</sup> which obligated India as a party to these international obligations to protect the environment through an effective, efficacious adjudication of environment related civil cases including its timely disposal.

In its fourteen years of establishment, the NGT journey was full of experiments for ensuring speedy justice and one such experiment was creating a special single member bench for adjudicating environmental matters. Now in this regard, the next section will be on the formation of NGT’s Benches as per the NGT Act to show how much progressive it was especially in respect of dealing with techno-scientific matters.

### III. FORMATION OF NGT BENCHES

Now, the NGTA bestowed power to the Central Government to exercise its power through a notification to establish the NGT on a specified date conferring jurisdiction, power and authority to adjudicate matters retaining to substantial questions relating to the environment. The NGT shall be consist of (a) a full-time Chairperson<sup>19</sup>; (b) not less than ten but subject to a maximum twenty full time Judicial<sup>20</sup> and Expert<sup>21</sup> Members each, as the Central Government may, from

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<sup>14</sup> Geetanjoy Sahu, ‘Green Courts in India’ (2008) 1 (1) Ram Manohar Lohiya National Law University Journal 141.

<sup>15</sup> Shastri (n 3) 171.

<sup>16</sup> Priyanka Priyadarshini, ‘Fortifying the National Green Tribunal’ (2017) VI(1) NLIU Law Review 63.

<sup>17</sup> Described as the International “Magna Carta” of our environment, it calls upon the States to take appropriate steps for the protection and improvement of human environment.

<sup>18</sup> This declaration has exhorted the member nations including India, to take appropriate steps for the protection and improvement of the human environment. Firstly, It was in pursuance of Principle 10 which states that, effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. Secondly, it is significant to note that Principle 13 of Rio Declaration states that “States shall develop the national law regarding liability and compensation for the victims of Pollution and other environmental damages”. To give effect to this principle it is needed to provide a forum for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance.

<sup>19</sup> Section 2 (b) “Chairperson” means the Chairperson of the NGT.

<sup>20</sup> Section 2 (h) “Judicial Member” means a member of the Tribunal who is qualified to be appointed as such under sub-section (1) of section 5 and includes the Chairperson. Section 5 (1) of the NGT Act states that a person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a judge of the Supreme Court of India or Chief Justice of a High Court. Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

<sup>21</sup> Section 2 (d) “Expert Member” means a member of the Tribunal who, is appointed as such, and holds qualifications specified in sub-section (2) of section 5, and is not a Judicial Member. Section 5 (2) of the NGT Act states that a person shall not be qualified for appointment as an expert Members unless he,- (a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substances management,

time to time notify.<sup>22</sup> Under section 4 (3), Chapter II of the NGT Act, the Central Government may, by issuing a notification specify the ordinary place of or places of sitting of the NGT and the territorial jurisdiction falling under such place of sitting. Also, if we look at Section 4 (4) (c) it states that the Central Government may, in consultation with the Chairperson of the NGT, makes rules regulating generally the practices and procedure of the Tribunal<sup>23</sup> including: - the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:

Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of judicial members hearing such application or appeal. For the effective functioning of the NGT, the *sine qua non* i.e., absolute condition is a judicial member who has a sound experience in dispute resolution based on legal principles and an expert member having knowledge of techno-scientific issues involved in environmental matters.<sup>24</sup> Therefore, the balance of judicial and expert members is mandatory to ensure that technical aspects in environmental disputes are adequately addressed.

#### IV. CONSTITUTION OF SINGLE MEMBER BENCH, NGT

The major reason for creating a single member bench arises from the vacancies of Judicial and Expert members in all the Zonal Benches of the NGT. It was then the MoEF&CC came with a notification gazetted on December 01, 2017 which amended and added a proviso in Rule 3 under the NGT (Practices and Procedure) Amendment Rules, 2017 empowering *the NGT Chairperson to constitute a single member benches in 'exceptional circumstances'* (the notification didn't address what it meant from exceptional circumstance before the chairperson).<sup>25</sup> Exceptional circumstances was used as a discretion in the hands of the Chairperson which was a free hand given to him to identify any case under this category making it to be misused often. More so, if the Chairperson is chosen from the influence of the executive, then such a nexus would make the Chairperson a mere puppet to pick cases as per executive's

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environment impact assessment, climate change management; biological diversity management and forest conservation) in a reputed national level institution or (b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or State Government or in a reputed National or State level institution.

<sup>22</sup> Section 4 (1) (a), (b) and (c) of the NGT Act, 2010. Moreover, as per Section 6 (1), the Chairperson, Judicial and Expert Members of the NGT shall be appointed by the Central Government.

<sup>23</sup> Section 2 (n) "Tribunal" means the National Green Tribunal established under section 3.

<sup>24</sup> Vishwas Kothari, 'Pune NGT bench unlikely to hear cases before March 12' *The Times of India* (15 September 2024) <<https://timesofindia.indiatimes.com/city/pune/pune-ngt-bench-unlikely-to-hear-cases-before-march-12/articleshow/62731008.cms>> accessed 15 September 2024.

<sup>25</sup> 'CENTRE'S NOTIFICATION ON NGT DRAWS FLAK' *THE NEW INDIAN EXPRESS* (07 SEPTEMBER 2024) <<https://www.newindianexpress.com/states/tamil-nadu/2017/dec/07/centres-notification-on-ngt-draws-flak-1720814.html>> accessed 07 SEPTEMBER 2024.

will to clear all the cases against the government which requires environmental clearances for projects. Such pendency if cleared will fasten the speed of developmental projects if Chairperson starts assigning cases to the single member benches on its own. This was an attempt by a Central Government to fasten the adjudication by a single member despite there being no quorum for hearing a matter by the Judicial and Expert member together.

Sadly, the NGT while facing the problem of appointments of Judicial and Expert Members that too created by the executive, the MoEF&CC came up with a mechanism which is against the parent legislation under section 4 (4) (c) of the NGT Act. It is the Central Government's responsibility to abide by its duty to appoint more members however to hide its failure or non-willingness to appoint it played with the NGT Rules, 2011 to further bifurcate members from two-member bench to a single member bench. This phase was crucial as NGT was facing a severe vacancy problem (only 6 out of 40 members were ensuring functioning of NGT) in the NGT and it was shocking to witness Single Bench of Expert members with no knowledge of law were deciding the cases. The court had earlier observed that the issue of vacancies in the NGT needs to be addressed on an urgent basis as the bench needs to be "manned".<sup>26</sup> After observing such circumstances, the Court said that resorting to illegality in absence of Judicial or Expert members is no excuse and if so, it would be better to transfer the cases before the HCs and scrap the NGT. Therefore, the idea of such an interim arrangement of constituting a single member bench to deal with the vacancies is unreasonable and illegal on the part of the Central Government.

Moreover, not only the environmentalists but the members of the Bar are against this notification and opined that rather than filling the exciting vacancies, the Central Government is tinkering with the NGTA and mocking it. In fact, the renowned environmentalist and advocate Ritwik Dutta said that "*The NGT is an expert tribunal dealing with specialised cases. The role of an expert member in the bench is crucial. The government is systematically killing the institution*".<sup>27</sup> It's because the Central Government is aware about the retirement of judicial and expert members despite that it seems they are hampering the fight for environmental justice through non appointments.<sup>28</sup> In all, this move shows that MOEF&CC wants its full control or

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<sup>26</sup>SC TO SCRUTINISE CHANGE IN RULES ALLOWING SINGLE BENCH AT NGT', *HINDUSTAN TIMES* (25 SEPTEMBER 2024) <[HTTPS://WWW.HINDUSTANTIMES.COM/INDIA-NEWS/SC-TO-SCRUTINISE-CHANGE-IN-RULES-ALLOWING-SINGLE-BENCH-AT-NGT/STORY-HA8TAAAJTA0OXn8KQ60RRJ.HTML](https://www.hindustantimes.com/india-news/sc-to-scrutinise-change-in-rules-allowing-single-bench-at-ngt/story-ha8TAAAJTA0OXn8KQ60RRJ.html)> ACCESSED 25 SEPTEMBER 2024

<sup>27</sup> (n 24).

<sup>28</sup> Manasa Rao, 'National Green Tribunal's lone member in the Southern Bench retires, 500 cases hit' *The News Minute* (02 October 2024) <<https://www.thenewsminute.com/tamil-nadu/national-green-tribunal-s-lone-member-southern-bench-retires-500-cases-hit-74113>> accessed 02 October 2024.

dominance over the NGT by creating it as its sub-unit which will ensure more project approvals but at the end it will adversely affect the aims and objectives of NGT by damaging or putting at risk our environment. Moreover, this amendment will only dilute the NGTA, its functioning and environmental justice mechanism but P. Jyothimani (former judicial member of the NGT) said that “these amendments can be made in case of a necessity so that the tribunal cannot become defunct.” He further added that in such cases, these rules have been amended, as an interim arrangement.<sup>29</sup> However, it is to be noted that for some this notification came as good news because many of the seats of NGT are either vacant or about to get vacant due to coming retirements. The functioning of the Principal and Zonal benches of green tribunal is hampered due to retirement of members and inordinate delay in appointment to the vacant post in the recent past<sup>30</sup> and hence, for the survival of NGT a single member bench became a necessity even though it was at the cost of bypassing the parent statute.

## V. REPORTED CASES DEALT BY NGT’S SINGLE MEMBER BENCH

The NGT, Western Zone Bench, Pune has only one judicial member to preside and adjudicate over the matters since December 11, 2017. In this bench the pendency went up to 500 cases and on an average 25 cases were listed for hearing.<sup>31</sup> In the Southern Zone Bench, Chennai after the retirement of the expert member P S Rao, the lone judicial member M S Nambiar was tackling the adjudication of environmental matters alone after the amendment on constituting the single member bench came.<sup>32</sup> The NGT under the Acting Chairperson U D Salvi suffered a major crisis at the appointment front which has fallen vacant time and again. Instead of tackling appointment, the action of the Central Government to form a single member bench was an unnecessary move and instead more appointments or at least re-appointments could have been done by bringing amendment in section 7<sup>33</sup> of the NGTA.

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<sup>29</sup>‘One-member bench will dilute NGT tribunal’, *DT Next* (03 October 2024) <<https://www.dtnext.in/tamilnadu/2017/12/05/onemember-bench-will-dilute-ngt-tribunal?infinitescroll=1>> accessed 03 October 2024.

<sup>30</sup> Press Trust of India, ‘SC to scrutinise change in rules allowing single bench at NGT’ *India Today* (10 October 2024) <<https://www.indiatoday.in/pti-feed/story/sc-to-scrutinise-change-in-rules-allowing-single-bench-at-ngt-1155671-2018-01-28>> accessed 10 October 2024.

<sup>31</sup> (n 23).

<sup>32</sup>‘NATIONAL GREEN TRIBUNAL BENCH’S LONE JUDICIAL MEMBER EXITS, 500 CASES HIT IN CHENNAI’ *THE NEW INDIAN EXPRESS* (15 OCTOBER 2024)

<<https://www.newindianexpress.com/cities/chennai/2018/jan/03/national-green-tribunal-benchs-lone-judicial-member-exits-500-cases-hit-in-chennai-1743042.html>> accessed 15 OCTOBER 2024

<sup>33</sup> The Chairperson, Judicial and Expert Member of the NGT shall hold office for a term of five years but shall not be eligible for re-appointments: A person who is or has been a Judge of the Supreme Court has been appointed as Chairperson or Judicial Member shall hold the office till he attained the age of seventy years: A person who is or has been the Chief Justice of the High Court has been appointed as a Chairperson or Judicial Member of the NGT shall hold the office till he attain the age of sixty seven years: A person who is or has been a Judge of the High



## VI. SUPREME COURT'S APPROACH ON THE SINGLE MEMBER BENCH OF NGT

The move of constituting single member bench in exceptional circumstances was seen as a violation of the NGTA and in *NGT Bar Association (Western Bench) v Union of India*,<sup>34</sup> the NGT Bar Association of Western Zonal Bench, Pune filed a petition on January 11, 2018 before the SC challenging the constitutional validity of the government order/ notification<sup>35</sup> as it is *ultra vires* and needs to be struck down as emphasized by Sr. Adv. Mukul Rohatgi while appearing for the NGT Bar association,<sup>36</sup> to which it was directed by the bench consisting of then CJI Dipak Misra, A.M. Khanwilkar and Dr. D.Y. Chandrachud<sup>37</sup> that the NGT's Chairperson is prohibited to form a single member bench to perform judicial functions for adjudication of disputes and shall comply with section 4 (4) (c) of the NGTA by ensuring each bench to consist of one judicial and an expert member for environment adjudication. In fact, when the case came into the scanner of the court, the bench did not prefer quashing the notification rather they asked then Attorney General K. K. Venugopal to advise the acting chairperson of NGT against setting up a single-judge bench at any of the NGT Zonal Benches and Principal Bench<sup>38</sup>. While hearing the respondents, K.K. Venugopal humbly submitted that there are a large number of vacancies lingering in the NGT to which the Court was prompt to reply that even in such conditions, the single member benches cannot be allowed to perform judicial functions.<sup>39</sup> Representing the Bar Association, Sr. Adv. Mukul Rohatgi said before the Court that the expert members with no legal knowledge in absence of the judicial member are deciding the cases, in fact the NGT is resorting to illegality as the Parent Act did not allow functioning of the green tribunal through a single member bench. He did not hesitate to say that if the NGT is non-functional, it's better to scrap it and send the cases of the tribunal to the HC.

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Court has been appointed as a Judicial Member of the NGT shall hold the office till he attain the age of sixty seven years: A person appointed as an Expert Member shall hold the office till he attain the age of sixty five years.

<sup>34</sup> Writ Petition (Civil) No.1235/2017.

<sup>35</sup> Ajay Khape, 'Cannot allow single-judge NGT benches: Supreme Court' *Indian Express* (10 October 2024) <<https://indianexpress.com/article/india/cannot-allow-single-judge-ngt-benches-supreme-court-5046867/>> accessed 10 October 2024.

<sup>36</sup> Press Trust of India, 'SC to scrutinise change in rules allowing single bench at NGT' *Business Standard* (11 October 2024) <[https://www.business-standard.com/article/pti-stories/sc-to-scrutinise-change-in-rules-allowing-single-bench-at-ngt-118012800098\\_1.html](https://www.business-standard.com/article/pti-stories/sc-to-scrutinise-change-in-rules-allowing-single-bench-at-ngt-118012800098_1.html)> accessed 11 October 2024.

<sup>37</sup> 'NO SINGLE-JUDGE NGT BENCH CAN HEAR CASES' *THE HINDU* (11 OCTOBER 2024) <<https://www.thehindu.com/news/cities/Delhi/no-single-judge-ngt-bench-can-hear-cases/article22615006.ece>> accessed 11 October 2024.

<sup>38</sup> Press Trust of India, 'No Single Judge Bench Can Hear Cases at National Green Tribunal, Says Supreme Court' *NDTV* (18 October 2024) <<https://www.ndtv.com/india-news/no-single-judge-bench-can-hear-cases-at-national-green-tribunal-says-supreme-court-1807057>> accessed 18 October 2024.

<sup>39</sup> Press Trust of India, 'No single judge bench can hear cases at NGT: SC' *Times of India* (01 November 2024) <<https://timesofindia.indiatimes.com/india/no-single-judge-bench-can-hear-cases-at-ngt-sc/articleshow/62725740.cms>> accessed 01 November 2024.

On hearing both the parties, the SC commented the crisis of vacancy as “appalling” as its functioning at less than half of its required capacity and hence, directed the Central Government to notify all existing vacancies at one go, including anticipated vacancies to take place in the next six months.<sup>40</sup> To curb this piquant situation, the Court took proactive measures by requesting the selection committee to expedite the process on an equivalent basis<sup>41</sup> and also held that until appointment orders come, the members at present as on this date but likely to retire shortly, shall continue to hold office and discharge their functions accordingly. The court also expressed its displeasure by asking why all tribunals await appointments? If the selection process is complete then the Central Government should take it to the logical conclusion.<sup>42</sup>

The order of the SC dated January 31, 2018 directed that “in the meantime<sup>43</sup>, the Chairperson shall not constitute a single member bench, but a Division Bench consisting of one judicial member and an expert member.” To comply with the Court’s order the acting Chairperson of NGT issued an order that no single member bench shall be constituted in any of the zonal benches with immediate effect.<sup>44</sup> To elaborate this order, it means that cases will be filed continuously and scrutinized by the registrar of the NGT but won’t proceed for hearing unless division or two-member bench is formed. Till then, in case of urgency of matter, the petitioners have to appear before the Principal Bench for adjudicating the matter. It can be said that the SC’s intention on the constitution and jurisdiction of the single member bench is clear i.e., its prohibition to function as the executive could not under its whims and fancy can formulate rules which are in contravention to the proviso to section 4 (4) (c) of the parent legislation.

In July 2022, the SC’s Bench composed of D.Y. Chandrachud J. and A.S. Bopanna J. in *Talli Gram Panchayat v Union of India*<sup>45</sup> held that the single member benches of the NGT cannot be constituted as the proviso to Section 4 (4) (c) of the NGTA mandates that there shall be at least one expert member in the Bench. According to the Apex Court, the delegated legislation must be in conformity with the parent legislation which authorizes its making. Hence, a rule

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<sup>40</sup> Press Trust of India, ‘Supreme Court terms vacancies in NGT as “appalling”, directs govt to notify in six months’ *Financial Express* (13 October 2024)

<<https://www.financialexpress.com/india-news/supreme-court-terms-vacancies-in-ngt-as-appalling-directs-govt-to-notify-in-six-months/2033345/>> accessed 13 October 2024.

<sup>41</sup> Press Trust of India, ‘Fill up vacancies in NGT expeditiously: Supreme Court to selection panel’ *The Economic Times* (02 October 2024)

<<https://economictimes.indiatimes.com/news/politics-and-nation/fill-up-vacancies-in-ngt-expeditiously-supreme-court-to-selection-panel/articleshow/77573071.cms?from=mdr>> accessed 02 October 2024.

<sup>42</sup> Abraham Thomas, ‘Supreme Court seeks status of vacancies in tribunals’ *Hindustan Times* (10 October 2024) <<https://www.hindustantimes.com/india-news/supreme-court-seeks-status-of-vacancies-in-tribunals-101616474573865.html>> accessed 10 October 2024.

<sup>43</sup> The Phrase ‘in the meantime’ means that while the executive deliberates on the dissonance of the Rule with the Act and judgments, there shall be a restraint on its implementation.

<sup>44</sup> (n 32).

<sup>45</sup> Civil Appeal Nos 383-384 of 2022.

cannot rise above the source of power.

On January 29, 2018 a single member bench of NGT dismissed the application for condonation of delay which was filed by the applicant for non-persecution. This instance led to an issue raised before the SC i.e., whether a single member of the NGT could have dealt with the proceedings and dismissed the applications for restoration and for condonation of delay on 29 January 2018 after the Attorney General of India has assured this court on 11 January 2018 that the proviso to Rule 3 would be rectified in consonance with the Act and the judgments of this Court?

Referring to its earlier order passed on 11 January 2018, the court, while allowing the appeal, observed thus:

“The order of this court on 11 January 2018 notes the assurance of the Attorney General that the rule under challenge would be rectified to bring it in accord with the Act and the judgments of this court. True, the order of this Court does not specifically record a direction for stay. This must however, be understood in the perspective of the fact that the Attorney General had placed a solemn assurance before the Court that the rule would be rectified to bring it in conformity with the parent enactment and the decisions of this Court. Implicit in this is the settled principle that delegated legislation must be in conformity with the enactment of the legislature which authorizes its making. A rule cannot rise above the source of power. Propriety warranted that a consistent course of action should have been followed by the NGT, once the assurance which was held out before this court by the Attorney General, was brought to its knowledge. The order of this Court on 31 January 2018 directed that “in the meantime, the Chairperson shall not constitute a Single Member Bench...”. The phrase “in the meantime” elucidates that during the time the executive deliberates on the dissonance of the Rule with the Act and judgments, there shall be a restraint on its implementation. Thus, it is evident from the phraseology of the order that this Court intended that there be an interdict on the constitution of single member benches constituted in purported exercise of the power conferred by the rule. The assumption of jurisdiction by a single member Bench clearly stands vitiated. The Single member could not have passed an order in view of the proviso to Section 4(4)(c) of the NGT Act 2010 which states that the number of expert members hearing the appeal or application shall be equal to the number of judicial members, mandating that there shall be at least one expert member on the Bench.”

Through this landmark judgement, the Apex Court has prevented the compromise of principle of natural justice which would have compromised if it lacked either the judicial or expert

member perspective which are essential for addressing the multifaceted nature of environmental cases. This judgement has rejected the view point favoring single member bench as it helped in reducing the pendency of environmental cases and facilitate speedy redressal of minor or procedural matters. This ruling instead favored that the environmental matters involve complex techno-scientific matters involving legal complexities and reaffirm its earlier position that not just the expert but judicial members in the NGT Bench are essential for environmental justice. Also, the Apex Court has protected the sanctity of the NGTA which required both the judicial and expert members in the bench for an in-depth decision-making process which involves legal and scientific analysis. Moreover, the court has protected the public confidence by rejecting the amendment for constituting a single member bench which could lead to public skepticism regarding NGT's credibility.

## VII. CONCLUSION

The advent of the National Green Tribunal is the outcome of the consistent hard work of the judiciary and the parliament. The executive in its fourteen years of existence had tried to amend the NGTA mostly driven by ulterior motives. These motives are mainly based on giving boost to the economic development in place of only focusing on the environment protection. To fulfill the government's agenda of economic development, the executive came up with an idea to establish single-member benches in the NGT and bypassing the NGTA which explicitly mandates the composition of a bench consisting of at least one judicial and one expert member to ensure a balanced adjudication process that integrated legal reasoning with scientific expertise. *Prima facie* this decision of single member bench was taken to address the Green Tribunal's operational challenges caused by severe member shortages, it inadvertently compromised the statutory framework and principles enshrined in the NGTA. This development raised concerns regarding adherence to legal mandates, institutional integrity, and the broader implications for environmental governance. Moreover, this move was widely criticized by the advocates, legal experts as it leaves the Green Tribunal vulnerable to acquisitions of undermining its own statutory foundation.

The Apex Court's intervention in this situation served as a pivotal reminder of the importance of upholding the rule of law and the principles of delegated legislation. The court not only prevented the constitution of single-member benches but also directed the Central government to expedite appointments. The court didn't let this temporary relief of constituting the single bench as sustainable in the eyes of law. It reinforced the integrity of the NGT and highlighted the need for structural reforms to prevent such amendments in future, urging the government to

prioritize transparency, accountability, and efficiency in its administrative process.

The success or failure to establish a single member bench of the NGT was completely dependent on the intention of the executive. The SC categorically said that such amendments are bad in law because it violates the parent act. The decision of the SC has proved that executive intent was not within the legal boundaries of the NGTA. Had the executive focused on amending the NGTA by bringing the provision for reappointment of judicial and expert members or increasing their age by maximum till 70 years instead of 65 and 67 years then this could have been a progressive approach to tackle the problem of appointment. It is clear that the executive even after delegation of power has failed to timely appoint the judicial and expert members and bring its functioning to a halt for a longer period of time. Fortunately, the judiciary rescued the NGT from the ulterior motives of the executive and declared the amendment on formation of a single member bench as invalid otherwise the entire exercise to bring an effective NGT would be adversely affected. At last, it can be said that, this entire controversy is a cautionary tale for policymakers and stakeholders to not let dilution of the entire NGTA as it ultimately affects NGT's robustness and effectiveness in delivering environmental justice.

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