

MADHYA PRADESH HIGH COURT ADVOCATES BAR A
ASSOCIATION AND ANR.

v.

UNION OF INDIA AND ANR.

(Writ Petition (Civil) No. 433 of 2012) B

MAY 18, 2022

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

National Green Tribunal Act, 2010:

ss. 14, 21 – Jurisdiction of the High Court, if ousted by the NGT – Held: Nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts u/Arts. 226 and 227 – Power of judicial review remains intact and unaffected by the NGT Act – Prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as it is a part of the basic structure of the Constitution – Constitution of India – Arts. 226 and 227. C D

National Green Tribunal – Seat of the NGT – Plea that there should be NGT Bench in every State – Held: Seat of the NGT benches can be located as per exigencies and it is not necessary to locate them in every State – Prayer for relocating the Bhopal NGT to Jabalpur is unmerited and is rejected. E

s.22 – Remedy of direct appeal to the Supreme Court from the decisions of the NGT u/s. 22 – Held: Remedy of direct appeal to the Supreme Court u/s. 22 is ultra vires the Constitution – As regards, the appeal mechanism to the High Court from the decisions of the NGT, the remedy before the High Court for a litigant u/Art. 226 and 227 continues to be available notwithstanding the enactment of the NGT Act and the provision for appeal to the Supreme Court u/s. 22 – Constitution of India. F

s. 3 – Validity of – Held: s. 3 is not a case of excessive delegation of power to the Central Government – s. 3 is found to be ultra vires the Constitution – Constitution of India. G

Dismissing the writ petition, the Court

HELD: 1. The National Green Tribunal under Section 14 & 22 of the National Green Tribunal Act, 2010 does not oust the H

- A High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution. The remedy of direct appeal to the Supreme Court under Section 22 of the NGT Act is intra vires the Constitution of India. Section 3 of the NGT Act is not a case of excessive delegation of power to the Central Government. The seat of the NGT benches can be located as per exigencies and it is not necessary to locate them in every State. The prayer for relocating the Bhopal NGT to Jabalpur is unmerited and is rejected. [Para 38][233-G-H; 323-A-C]
- B Whether the NGT ousts the High Court's jurisdiction under Sections 14 & 22 of the NGT Act?

- C 2. The power of judicial review under Articles 226, 227, and 32 are part of the basic structure of the Constitution and the same is inviolable. The NGT is within the purview of Article 226 and 227 jurisdiction of the High Courts. The High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition. Nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners. [Paras 12-15][314-C, G-H; 315-A, F-H; 316-A]
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*L Chandra Kumar v. UOI 1997 (3) SCC 261 : [1997]
(2) SCR 1186 – relied on.*

- G Whether a seat of the NGT should be in every State? If yes, should they invariably be established at the principal seat of High Court, which in this case would be Jabalpur instead of Bhopal?

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3.1 The NGT caters to a limited number of cases unlike the CAT, where the volume of cases is substantially higher. The volume of cases handled by the NGT and the CAT are not comparable. Looking at the large volume of service-related cases, it was suggested that the Benches of the CAT should be located at the seat of each High Court. But such logic cannot apply to the NGT, where the zone wise pendency in aggregate is only 2237 cases as on 31.3.2022 from the date of its inception. [Paras 17 and 19][316-G; 317-E]

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3.2 With the low case load, if the NGT Benches are set up in all 28 States and 8 union territories, the judges and other members in these forums might be left twiddling their thumbs. Accordingly, no basis is seen to allow one NGT bench in every State. [Para 21][317-H; 318-A]

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3.3 The petitioner put forth that the seat of the NGT must be at Jabalpur where the principal seat of the Madhya Pradesh High Court is located. The Bhopal Bench caters to multiple States. In such a situation, the location of the Bench to the extent possible, should be convenient and accessible to litigants of all three States. Here the respondents project that Bhopal is centrally located in relation to Rajasthan, Madhya Pradesh, & Chhattisgarh. Moreover, Bhopal being the capital of Madhya Pradesh, is well connected and accessible without much difficulty. This would commend that Bhopal is a sound locational choice for the NGT which caters to the litigants from three States. [Para 22][318-B-D]

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3.4 The low case load in the Bhopal Bench, do not match with the strident plea of the petitioners to locate the Bench at Jabalpur. This is therefore perceived as an attempt by the petitioners (who are practicing lawyers in Jabalpur), to primarily espouse their professional interest. No other rational basis is seen for the Association's plea for relocation of the NGT Bench to Jabalpur from Bhopal. There is no justification to grant such relief to the petitioners. [Para 23][318-E]

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S.P. Sampath Kumar vs. Union of India (1987) 1 SCC 124 : [1987] (1) SCR 435 – held inapplicable.

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- A **Whether the remedy of direct appeal to the Supreme Court from the decisions of the NGT under Section 22 of the NGT Act is ultra vires to the Constitution? Whether an appeal mechanism be provided to the High Courts from the decisions of the NGT?**
- B **4.1 It needs to be observed that even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal , the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the CPC and the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation*, are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict. Also importantly, the right to appeal before the High Court is a creature of the statute and is not an inherent right. The provision for appeal to High Court should not therefore be created by issuing a writ of Mandamus as that would be legislating through judicial order, and would impinge upon the well-founded concept of separation of powers. The options available to a litigant to either move to the Supreme Court in a case where a substantial question of law arises or proceed under Article 226 or 227 must not also be overlooked. If necessary, a party can also approach this Court by way of an Article 136 petition. With such choices being available for a party no rational justification is found for striking down Section 22 of the Act which provides for a direct appeal to the Supreme Court. [Paras 24-26][319-A-E]**
- G **4.2 A litigating party must also realise that in any event, if the opposite side approaches the Supreme Court, the litigant on the other side would have to defend his case before this Court and at that stage they cannot be complaining about the distance to Delhi. Thus, the remedy of direct appeal to the Supreme Court**
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under the NGT Act from the NGT's decision cannot be seen as denial of access to justice to the litigants in the field of environmental law. [Para 27][319-F]

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4.3 It must also be underscored that the ground raised by the Petitioners about Supreme Court being inaccessible, would equally apply to litigants, from all across the country, who have to travel to the Supreme Court, either by way of Article 136 or Article 32 or any other provision. Despite the provision under Article 130 of the Constitution, the Supreme Court has no other bench away from Delhi. In these circumstances by pleading inaccessibility, the petitioners are also incidentally questioning, the location of the Supreme Court at New Delhi. Such a contention on the face of it would be irrational and not acceptable. [Para 30][320-D-E]

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4.4 It cannot also be overlooked that it is the Supreme Court itself which had recommended the setting up of environmental court with direct appeals to the Supreme Court. This would also support the proposition on constitutional validity of Section 22 of the NGT Act and that it is not ultra vires to the Constitution. [Para 31][320-F]

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Whether Section 3 of the NGT Act is ultra vires to the Constitution as suffering from the vice of excessive delegation?

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5.1 It must be borne in mind that the operationalization of the NGT, including the location of its Benches, was closely monitored by the Supreme Court. It is further seen that the Union Government is to specify the ordinary place of sitting of NGT and its territorial jurisdiction under Section 3 of the NGT Act being mindful of the demand for environment litigation within a particular territorial area. The Government is also to be guided by the objects of the Act as also the directions given by the Supreme Court from time to time. Since, the Government is acting on the issue with the guidance of this Court, and the Government is obliged to follow the objectives of the NGT Act, adequate safeguards are seen to guide the government. The Court is therefore of the opinion that Section 3 of the NGT Act is not a case of excessive delegation. [Para 32][321-A-C]

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- A *Madras Bar Association vs. Union of India and Anr.*
**(2014) 10 SCC 1 : [2014] (10) SCR 1 – held
 inapplicable.**

- B **5.2 Section 3 of the NGT Act is found to be intra vires to
 the Constitution of India. However, it is clarified that the
 conclusion is based on the specific facts of this case. [Para 36][322-
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*M.C. Mehta v. Union of India (1986) 2 SCC 176 : [1986]
 (1) SCR 312; Indian Council for Enviro-Legal Action
 v. Union of India (1996) 3 SCC 212 : [1996] (2) SCR*

- C *503; Vellore Citizens' Welfare Forum v. Union of India
 (1996) 5 SCC 647 : [1996] (5) Suppl. SCR 241; A.P.
 Pollution Control Board v. Prof. M.V. Nayudu (1999) 2
 SCC 718 : [1999] (1) SCR 235; A.P. Pollution Control
 Board II v. Prof. M.V. Nayudu (2001) 2 SCC 62 : [2000]*

- D *(5) Suppl. SCR 249; Union of India Vs. Vimal Bhai
 SLP(C) No. 12065 of 2009; Municipal Corporation of
 Greater Mumbai vs. Ankita Sinha & Ors. 2021 SCC
 Online SC 897; Mantri Techzone (P) Ltd. vs. Forward
 Foundation (2019) 18 SCC 494; Whirlpool Corp. Vs.
 Registrar of Trade Marks, Mumbai and Others (1998)*

- E *8 SCC 1 : [1998] (2) Suppl. SCR 359; Associated
 Provincial Picture Houses Ltd. vs. Wednesbury
 Corporation [1948] 1 KB 223; R.K. Jain v. Union of
 India (1993) 4 SCC 119 : [1993] (3) SCR 802; Rojer
 Mathew v. South Indian Bank Ltd. (2020) 6 SCC 1 :
 [2019] (16) SCR 1 - referred to.*

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Case Law Reference

	[1986] (1) SCR 312	referred to	Para 5.1
	[1996] (2) SCR 503	referred to	Para 5.1
G	[1996] (5) Suppl. SCR 241	referred to	Para 5.1
	[1999] (1) SCR 235	referred to	Para 5.1
	[2000] (5) Suppl. SCR 249	referred to	Para 5.1
	(2019) 18 SCC 494	referred to	Para 8
H	[1997] (2) SCR 1186	relied on	Paras 12, 13, 14

[1998] (2) Suppl. SCR 359	referred to	Para 14	A
[1987] (1) SCR 435	held inapplicable	Paras 19, 22	
[1993] (3) SCR 802	referred to	Para 28	
[2019] (16) SCR 1	referred to	Para 29	
[2014] (10) SCR 1	held inapplicable	Para 34	B

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 433 of 2012.

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

Siddhartha R. Gupta, Mrigank Prabhakar, Shivam Singh Baghel, C
Ms. Sakshi Banga, Advs. for the Appellants.

K. K. Venugopal, AG, Ms. Aishwarya Bhati, ASG, Saurabh Mishra, Amol Chandan, Ms. Vanshaja Shukla, Ms. Shivika Mehra, Aman Sharma, Manvendra Singh, Gurmeet Singh Makker, Mishra Saurabh, Rajan Kumar Chourasia, Sunny Choudhary, Advs. for the Respondents. D

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Through this writ petition filed under Article 32 of the Constitution of India, the petitioners who are the Madhya Pradesh High Court Advocates Bar Association and the District Bar Association, both with their registered offices at Jabalpur, have raised a challenge to the vires of *the National Green Tribunal Act, 2010* (hereinafter referred to as “the NGT Act”), and pray for the following reliefs: - E

“(a) Issue an appropriate writ of certiorari or any other writ of similar nature directing that the Bench of National Green Tribunal be set up at all the places where the principal seat of High Court is situated. F

(b) Hold and declare that the proposed sitting up of Bench of NGT at Bhopal is not constitutionally and/or sustainable, G

(c) Declare the provision of Section 14 r/w 22 of the National Green Tribunal Act, as unconstitutional insofar as they purport to exclude the writ jurisdiction of High Court under Article 226/227 of the Constitution of India.”

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- A 2. The issues to be considered in this writ petition are:-
- A. *Whether the National Green Tribunal (hereinafter referred to as "the NGT") ousts the High Court's jurisdiction under Sections 14& 22 of the NGT Act?*
 - B. *Whether a seat of the NGT should be in every State? If yes, should they invariably be established at the principal seat of High Court, which in this case would be Jabalpur instead of Bhopal?*
 - C. *Whether the remedy of direct appeal to the Supreme Court from the decisions of the NGT under Section 22 of the NGT Act is ultra vires to the Constitution? Whether an appeal mechanism be provided to the High Courts from the decisions of the NGT?*
 - D. *Whether Section 3 of the NGT Act is ultra vires to the Constitution as suffering from the vice of excessive delegation?*
- E 3. We have heard Mr. Siddhartha R. Gupta, the learned counsel for the petitioners. The Union of India is represented by Mr. K.K. Venugopal, the learned Attorney General for India together with Ms. Aishwarya Bhati, learned Additional Solicitor General. The State of Madhya Pradesh (respondent No. 2) is represented by Mr. Sunny Choudhary, learned counsel.

Arguments on behalf of Petitioners

- F 4.1 The petitioners, who are espousing the cause of the Jabalpur based lawyers practicing before the High Court and the Civil Courts, contend that the Bhopal Bench of the NGT is located arbitrarily and the decision is inconsistent with the direction in *S.P. Sampath Kumar vs. Union of India*¹ where this Court observed that for ensuring the efficacy and efficiency of any Tribunal, its seat should be at a place where the principal seat of the High Court is situated. As the Bench of the NGT is set up at Bhopal for catering to the environment related cases covering three States i.e., Madhya Pradesh, Chhattisgarh, and Rajasthan, the petitioners pray for setting up the Benches of the NGT at the principal seats of the High Courts in each of the three States and for their State of MP, the petitioners want it at Jabalpur.

H ¹(1987) 1 SCC 124, Para. 8.

4.2 According to the petitioners, environmental litigation is predominantly related to local factors and therefore, an easily accessible and available forum is necessary to be constituted, without requiring the litigants to move to distant places to secure environmental justice.

4.3 The petitioners argue that through incorporation of Section 14 and Section 22 in the NGT Act, the jurisdiction and the role of the High Courts under Article 226/227 is extinguished. This, therefore, has impacted the basic feature of the Constitution and as such the provisions of Section 14 read with Section 22 of the NGT Act should be struck down to the extent they divest the High Courts of their power as a superior Court.

4.4 Adverting to the power of the Central Government to identify the ordinary place of sitting of the NGT and specifying their respective territorial jurisdiction under Section 4(3) of the NGT Act, the petitioners argue that such power being unguided, suffers from the vice of excessive delegation. Laying stress on location of the NGT Bench at Jabalpur where adequate infrastructure is available, the petitioners question the choice of the seat at Bhopal instead of at Jabalpur, which is the principal seat of the Madhya Pradesh High Court. According to the petitioners, this impacts the right of the litigant in the field of environmental law, to access justice.

4.5 The remedy of appeal to the Supreme Court under Section 22 of the NGT Act in the petitioner's perception, practically amounts to denial of access to justice for the economically vulnerable litigants and this is contended to defeat the inherent objective of access to justice by bypassing the conveniently accessible remedy before the High Courts under Article 226 and 227 of the Constitution of India.

4.6 The petitioners next argue that the NGT does not enjoy the authority and autonomy available to judges in the High Courts and bearing in mind the conditions of service, tenure, and other aspects of the judicial and non-judicial members of the NGT, according to the petitioners, it is neither an effective nor an appropriate substitute of the High Courts, which were entertaining environmental disputes through respective Green Benches, prior to the enactment of the NGT Act. More specifically, the process of appointment, service conditions and other related provisions for appointment of presiding members of the NGT are not at par with the judges of the High Court and therefore, the NGT can only play a

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- A “*supplemental or subservient role instead of being an effective and appropriate substitute for the High Courts.*”

Arguments on behalf of Respondent

- 5.1 Per contra, Mr. K K Venugopal, the learned Attorney General leading the arguments for the respondent’s project that the NGT was set up because of the prodding and recommendations made by the Supreme Court while dealing with environmental cases and the Parliament was repeatedly entreated by the Court to create specialized environmental court with qualified judges and technical experts on the Bench. The learned Attorney General refers to the exhortations made by the Supreme Court in *M.C. Mehta v. Union of India*², *Indian Council for Enviro-Legal Action v. Union of India*³, *Vellore Citizens’ Welfare Forum v. Union of India*⁴, *A.P. Pollution Control Board v. Prof. M.V. Nayudu*⁵ and *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*⁶ and their acceptance by the Parliament, following the 186th Report of the Law Commission which lead to the establishment of environmental courts. The Law Commission suggested in its Report that appeals from the environmental courts should lie before the Supreme Court. It is in this backdrop the learned AG submits that the NGT Act was enacted and the environmental cases which were hitherto heard by green benches in the High Court, were ordered to be transferred to the NGT by the Supreme Court itself as the same would help in rendering expeditious and specialized justice in the field of environment.

- 5.2 Insofar as the creation and setting up of the NGT and the location of their Benches, the learned AG submits that this was done under the active supervision of the Supreme Court and only after the proposed places of sitting recommended by the Central Government received the concurrence of this Court, the concerned Benches and their place of sitting was notified by the Central Government. It is therefore argued that the related notification had the imprimatur of the Supreme Court. The respondents point out that the Supreme Court monitored and oversaw the implementation of the NGT Act and setting up of its Benches in *Union of India Vs. Vimal Bhai (SLP(C) No. 12065 of 2009)* and the various orders passed on 19.9.2011, 6.12.2012 and 15.3.2013 by this

² (1986) 2 SCC 176, Para. 22.

³ (1996) 3 SCC 212, Para. 6.

⁴ (1996) 5 SCC 647, Para. 25.

⁵ (1999) 2 SCC 718, Para. 23, 42, 47, 48, 52.

H ⁶ (2001) 2 SCC 62, Para. 73.

Court would reflect that individual Bench of the NGT was set up to cater to multiple States and the location so chosen for the NGT at Bhopal, also had the approval of the Supreme Court.

5.3 The learned Attorney General next contends that the remedy before the High Court for a litigant under Article 226 and 227 continues to be available notwithstanding the enactment of the NGT Act and the provision for appeal to the Supreme Court under Section 22 of the NGT Act. It is specifically submitted by the learned AG that the High Court's power of judicial review remains unaffected by the NGT Act as it is a part of the basic structure of our constitution, as was declared in *L Chandra Kumar v. UOI*.

BACKDROP OF THE NATIONAL GREEN TRIBUNAL

6. The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 29.3.2003 which came after the Supreme Court repeatedly urged Parliament through various judgments to establish specialized environmental courts, with qualified judges and technical experts on the bench. The Supreme Court also put forward that there should be direct appeals to the Supreme Court from such environmental courts. The Law Commission then recommended creation of a specialized court to deal with the environmental issues. The Law Commission expressed the view that it is not convenient for the High Courts and the Supreme Court to make local inquiries or to receive evidence. Moreover, the superior Courts will not have access to expert environmental scientists on permanent basis to assist them. The NGT was conceived as a complementary specialized forum to deal with all multi-disciplinary environmental issues, both as original as well as an appellate authority. The specialized forum was also made free from the rules of evidence applicable to normal courts and was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc., with specific mandate to observe the principles of natural justice.

7. In order to understand the objective of the NGT Act, we may usefully extract the following from the *Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors.*⁸ where the following was stated by one of us (Justice Hrishikesh Roy) for the 3 Judges Bench: -

⁷ 1997 (3) SCC 261.

⁸ 2021 SCC Online SC 897.

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- A “**24** *The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2,3,4,5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow: -*
- B “*2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.*
- C “*3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.*
- D “*4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.*

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

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6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

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25. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the National Environmental Tribunal Act, 1995 (NET) which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

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26. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to "achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast

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- A *and satisfactory judicial procedure". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.*
- B *27. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.*
- C *28. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.*
- D *29. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT."*
- E 8. Explaining the purpose to constitute the specialized court to deal with environmental issues, in *Mantri Techzone (P) Ltd. vs.*
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*Forward Foundation*⁹, Justice S. Abdul Nazeer writing for the three Judges Bench made the following pertinent observation, on the status of the NGT: -

“40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.”

9. The NGT is set up under the constitutional mandate under Entry 13 List I of Schedule VII to enforce Article 21 in regard to the environment and the Tribunal was conferred special jurisdiction for enforcement of environmental rights. It thus appears that the role of the NGT was not simply adjudicatory, but it also had the equally vital role which is preventive, ameliorative, or of the remedial category. The functional capacity of the NGT was intended to leverage wide powers to do full justice in the field of environment. The NGT came into existence as a *sui generis* institution established for the enforcement of environmental rights emanating from Article 21 of the Constitution¹⁰.

10. After the NGT was set up, the Supreme Court pertinently directed the transfer of environmental cases pending before the High Courts to the NGT for expeditious and specialized justice for all concerned. The Supreme Court also actively oversaw the implementation of the Act and creation of the NGT itself through various Orders¹¹. Those also pertained to, *inter-alia*, the location of the NGT benches. In other words, the Supreme Court was not only conscious of the location of the benches of the NGT but also had given its imprimatur to the NGT's creation and other aspects.

⁹ (2019) 18 SCC 494.

¹⁰ 2021 SCC OnLine 897, Para. 44, 98.

¹¹ SLP (C) 12065 of 2009.

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- A 11. With the above prefatory contexts in mind, we may now look at the challenge.

ISSUE WISE DISCUSSION

- A. *Whether the NGT ousts the High Court's jurisdiction under Sections 14 & 22 of the NGT Act?*
- B 12. Insofar as the contention of the petitioners that there is ouster of jurisdiction of the High Courts under Article 226 and 227 of the Constitution because of Sections 14 & 22 of the NGT Act, it must be recalled that in *L. Chandra Kumar vs. Union of India*[*supra*], it has been categorically declared that the power of judicial review under Articles 226, 227, and 32 are part of the basic structure of our constitution and the same is inviolable. The following pertinent opinion rendered by the 7 Judges' bench of this Court must be remembered on this aspect: -
- “78.....We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.
79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”
- G 13. Apart from the clear enunciation on legal position to the effect that the NGT is within the purview of Article 226 and 227 jurisdiction of the High Courts, the learned Attorney General on behalf of the Union of India has also made submissions consistent with *L. Chandra Kumar*[*supra*] and conceded the legal position.
- H 14. It can further be noted that in terms of the above ratio in *L. Chandra Kumar* [*supra*], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of

the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in *Whirlpool Corp. Vs. Registrar of Trade Marks, Mumbai and Others*¹²;

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

15. It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's

¹² (1998) 8 SCC 1.

A jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.

B. Whether a seat of the NGT should be in every State? If yes, should they invariably be established at the principal seat of High Court, which in this case would be Jabalpur instead of Bhopal?

16. The petitioners in pleading for a NGT Bench in each state, place heavy reliance on *S.P. Sampath[supra]*. To appreciate this, the Court's following observation needs consideration in the context of administrative tribunals: -

C “*8. I may also add that if the Administrative Tribunal is to be an equally effective and efficacious substitution for the High Court on the basis of which alone the impugned Act can be sustained, there must be a permanent or if there is not sufficient work, then a Circuit Bench of the Administrative Tribunal at every place where there is a seat of the High Court. I would, therefore, direct the government to set up a permanent Bench and if that is not feasible having regard to the Vol. of work, then at least a circuit Bench of the Administrative Tribunal wherever there is a seat of the High Court, on or before March 31, 1987. That would be necessary if the provisions of the impugned Act are to be sustained. So far as rest of the points dealt with in the judgment of Ranganath Misra, J. are concerned, I express my entire agreement with the view taken by him.”*

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Personnel, Public Grievances, Law and Justice, the CAT have over 48,000 cases pending as on 6th March, 2020. A

18. While on this, we may also notice the data available on the website of the National Green Tribunal¹⁴ which reflects the pendency of cases before the NGT as on 28.02.2022: -

ZONE WISE Pendency as on 28/02/2022	
Bench	Pendency
Principal Bench (Delhi)	621
SZB (Chennai)	517
CZB (Bhopal)	107
WZB (Pune)	694
EZB (Kolkata)	298
Total:	2237

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19. As is apparent from the above chart the volume of cases handled by the NGT and the CAT are not comparable. Looking at the large volume of service-related cases, it was suggested that the Benches of the CAT should be located at the seat of each High Court. But such logic cannot apply to the NGT, where the zone wise pendency in aggregate is only 2237 cases as on 31.3.2022 from the date of its inception. Therefore, the ratio in *S.P. Sampath [supra]* does not aid the petitioners who want the NGT Bench to be relocated from Bhopal to Jabalpur, where the Madhya Pradesh High Court is located.

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20. It is also worthy of attention that the total disposal by all Benches of the NGT is 2799 cases during 12 months i.e., March, 2021 to February, 2022. The pendency figure for this period is 2237 only. The rate of disposal being higher than the pendency, no major backlog issue is seen before the NGT. The strikingly small 107 cases in the NGT's Bhopal Bench must also receive our due attention. These data do not provide for a reasonable basis to entertain a prayer for a NGT Bench at Jabalpur or for that matter, an individual NGT Bench in each of those three States.

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21. With the low case load, if the NGT Benches are set up in all 28 States and 8 union territories as is suggested by the petitioners, the

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¹⁴ National Green Tribunal

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A judges and other members in these forums might be left twiddling their thumbs. Accordingly, no basis is seen to allow one NGT bench in every State.

22. With the above answer to the first part of the issue B, the second part becomes superfluous. However, since earnest submission B is made by the petitioner's counsel, the issue needs to be decided. The petitioner put forth that the seat of the NGT must be at Jabalpur where the principal seat of the Madhya Pradesh High Court is located as per the dicta in *S.P. Sampath [supra]*. On this aspect, the cited case is entirely inapplicable as the Bhopal Bench caters to multiple States. In C such a situation, the location of the Bench to the extent possible, should be convenient and accessible to litigants of all three States. Here the respondents project that Bhopal is centrally located in relation to Rajasthan, Madhya Pradesh, & Chhattisgarh. Moreover, Bhopal being the capital of Madhya Pradesh, is well connected and accessible without much difficulty. This would commend to us that Bhopal is a sound D locational choice for the NGT which caters to the litigants from three States.

23. The low case load in the Bhopal Bench, do not match with the strident plea of the petitioners to locate the Bench at Jabalpur. This is therefore perceived as an attempt by the petitioners (who are practicing E lawyers in Jabalpur), to primarily espouse their professional interest. No other rational basis is seen for the Association's plea for relocation of the NGT Bench to Jabalpur from Bhopal. We see no justification to grant such relief to the petitioners and the second segment of issue B is accordingly answered against them.

F C. *Whether the remedy of direct appeal to the Supreme Court from the decisions of the NGT under Section 22 of the NGT Act is ultra vires to the Constitution? Whether an appeal mechanism be provided to the High Courts from the decisions of the NGT?*

G 24. The petitioners have also pleaded that instead of appeal to the Supreme Court under Section 22 from the orders passed by the NGT, an appeal mechanism as a matter of right should also be provided before the concerned High Courts. According to them, appeal to the Supreme Court is inadequate and unaffordable and therefore inaccessible. On H this aspect it needs to be observed that even when a direct appeal to the

Supreme Court is provided by a statute¹⁵ against the decision of a tribunal¹⁶, the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the CPC and the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation*¹⁷, are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict.

25. Also importantly, the right to appeal before the High Court is a creature of the statute and is not an inherent right. The provision for appeal to High Court should not therefore be created by issuing a writ of Mandamus as that would be legislating through judicial order, and would impinge upon the well-founded concept of separation of powers¹⁸.

26. The options available to a litigant to either move to the Supreme Court in a case where a substantial question of law arises or proceed under Article 226 or 227 must not also be overlooked. If necessary, a party can also approach this Court by way of an Article 136 petition. With such choices being available for a party no rational justification is found for striking down Section 22 of the Act which provides for a direct appeal to the Supreme Court.

27. A litigating party must also realize that in any event, if the opposite side approaches the Supreme Court, the litigant on the other side would have to defend his case before this Court and at that stage they cannot be complaining about the distance to Delhi. Thus, the remedy of direct appeal to the Supreme Court under the NGT Act from the NGT's decision cannot be seen as denial of access to justice to the litigants in the field of environmental law.

28. The issue of direct appeals to the Supreme Court, or entertaining petitions under Article 136 to challenge tribunal's decision,

¹⁵ *Inter alia*, Electricity Act, 2003; Telecom Regulatory Authority of India Act, 1997.

¹⁶ *Inter alia*, Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007.

¹⁷ [1948]1KB223.

¹⁸ (2017) 7 SCC 221, Para. 36.

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- A was considered in the case of R.K. Jain v. Union of India.¹⁹ In paragraph 76 of the said judgment, this Court addressed similar submission to the effect that appeal mechanism should be provided from a tribunal's decision, to a division bench of the High Court. The three Judges bench of this Court, however, expressly refrained from issuing direction for creation of appeal provisions to the High Courts, which was perceived to be an impermissible judicial function. So far, the legislature has not acted on the recommendation of this Court but then that issue is within the policy domain of the legislative wing of the State.

29. The implication of the Supreme Court being conceived as the first appellate forum was considered in Rojer Mathew v. South Indian Bank Ltd.²⁰, and in that case the Union Government was directed to do a study on the effect of direct appeals to the Supreme Court and place the resultant report before Parliament. But even in Rojer Mathew [supra], the Supreme Court had no occasion to say that direct appeals to the Supreme Court is constitutionally impermissible.

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- D 30. It must also be underscored that the ground raised by the Petitioners about Supreme Court being inaccessible, would equally apply to litigants, from all across the country, who have to travel to the Supreme Court, either by way of Article 136 or Article 32 or any other provision. Despite the provision under Article 130 of the Constitution, the Supreme Court has no other bench away from Delhi. In these circumstances by E pleading inaccessibility, the petitioners are also incidentally questioning, the location of the Supreme Court at New Delhi. Such a contention on the face of it would be irrational and not acceptable.

31. It cannot also be overlooked that it is the Supreme Court itself which had recommended the setting up of environmental court with direct F appeals to the Supreme Court. This would also support the proposition on constitutional validity of Section 22 of the NGT Act and that it is not ultra vires to the Constitution. Consequently, the answer to both aspects of the question C is answered in favour of the respondents.

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- D. Whether Section 3 of the NGT Act is ultra vires to the Constitution as suffering from the vice of excessive delegation?*

32. Adverting next to the argument of the petitioners that Section 3 is a case of excessive delegation to the Union Government. It must be

¹⁹ (1993) 4 SCC 119.

H ²⁰ (2020) 6 SCC 1, Para.218.

borne in mind that the operationalization of the NGT, including the location of its Benches, was closely monitored by the Supreme Court. It is further seen that the Union Government is to specify the ordinary place of sitting of NGT and its territorial jurisdiction under Section 3 of the NGT Act being mindful of the demand for environment litigation within a particular territorial area. The Government is also to be guided by the objects of the Act as also the directions given by the Supreme Court from time to time. Since, the Government is acting on the issue with the guidance of this Court, and the Government is obliged to follow the objectives of the NGT Act, adequate safeguards are seen to guide the government. We are therefore of the opinion that Section 3 of the NGT Act is not a case of excessive delegation.

33. The petitioners are seen to have founded their contentions with considerable reliance on the decision in *Madras Bar Association vs. Union of India and Anr.*²¹ to argue that the NGT is neither accessible nor it is independent in dealing with environmental cases. In the relied case, this Court struck down certain provisions of the *National Tax Tribunal Act, 2005* (for short, ‘NTT Act’) but this must be appreciated in the context of that case. Moreover, one must not overlook the distinction between the operation of the NTT Act vis-à-vis the NGT Act. To be specific, the NTT Act provided that the NTT would ordinarily sit at New Delhi. The NGT Act however provides for the creation of benches across the country. Additionally, the NTT was vested with the power of adjudicating appeals arising from orders passed by the Income Tax Appellate Tribunal on substantial questions of law. This was a jurisdiction that the High Courts were exercising under Article 227 in certain cases, and in that context, it was found that the NTT was indirectly impinging on the jurisdiction of the High Courts under Article 227. The jurisdiction exercised by the NGT is however distinct, and different, and not comparable. Also glaring was the fact that Union Government had the power to transfer members of the NTT from one bench to another. No such provision exists in the NGT Act. Besides, the NTT was constituted only to determine substantial questions of law and it was unclear how accountants and other technical members with no legal training would deal with the issues raised in such matters. Those troubling issues do not arise in the NGT Act. One must also be cognizant of the fact that the Selection Committee under Section 7 of the NTT Act was

²¹ (2014) 10 SCC 1.

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- A dominated by two secretaries of the Government, as opposed to the Selection Committee for the NGT under the Tribunal Reforms Act which clearly has judicial dominance.

34. Taking into account all the striking distinctions between the operation of the NGT Act and the NTT Act, the petitioners' reliance on B the NTT judgment, which was rendered in the context of the provisions of the NTT Act, is found to be wholly misplaced.

35. Addressing next, the argument of the petitioners that the NGT does not enjoy the same status and independence as the High Courts on account of the conditions of service and tenure etc., it would be C appropriate to say that although in paragraph 33 of the written submissions, the petitioners deal with specific provisions of the *Tribunal Reforms Act, 2021* and the Rules framed, those were neither raised in the petition nor any relief is claimed in reference to the *Tribunal Reforms Act*. Conspicuously, those were also not argued during the oral hearing. D Therefore, we need not delve into those aspects as the same is beyond the scope of the instant proceeding.

36. It must also be borne in mind that the question of validity of the *Tribunal Reforms Act*, is pending in this Court in a batch of cases tagged with *WP(C) 1018/2021 Madras Bar Association v. Union of India*. Few similar issues like the present have also been raised in the pending cases where the Union of India has filed counter affidavit indicating their stand. As those issues are under consideration in the pending case, the same is left to be decided in those matters.

37. For all the aforesaid reasons, section 3 of the NGT Act is F found to be intra vires to the Constitution of India. However, it is clarified that our conclusion is based on the specific facts of this case, and we make no comments on the issues which are sub-judice in the *WP(C) 1018/2021 Madras Bar Association v. Union of India*.

Conclusions

- G 38. In consequence of the above analysis, our conclusions are,
- A. The National Green Tribunal under Section 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution.

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B. The remedy of direct appeal to the Supreme Court under Section 22 of the NGT Act is intra vires the Constitution of India. A

C. Section 3 of the NGT Act is not a case of excessive delegation of power to the Central Government.

D. The seat of the NGT benches can be located as per exigencies and it is not necessary to locate them in every State. The prayer for relocating the Bhopal NGT to Jabalpur is unmerited and is rejected. B

39. With the foregoing conclusions, the Writ Petition is found devoid of merit and is dismissed. The parties to bear their own cost. C

Nidhi Jain
(Assisted by : Tamana, LCRA)

Writ Petition dismissed.