

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 88 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA
and****Sd/-****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

=====

CONSUMER PROTECTION AND ANALYTIC COMMITTEE
Versus
UNION OF INDIA & 2 other(s)

=====

Appearance:

MR MASOOM K SHAH(6516) for the Applicant(s) No. 1

MS MOHINI K SHAH(775) for the Applicant(s) No. 1

MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER for the
Opponent(s) No. 2MR DEVANG VYAS,ADDL. SOLICITOR GENERAL OF INDIA, for the
Opponent(s) No. 1

MR NACHIKET A DAVE, ADVOCATE for the Opponent(s) No. 3

=====

**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Date : 09/08/2021

**ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ-application under Article 226 of the Constitution of India filed in public interest, the writ-applicant has prayed for the following reliefs :

“(A) Be pleased to declare Section 4 of the National Green Tribunal Act, 2010 as ultra vires to the Constitution of India, 1950.

(B) Be pleased to declare the Notification No.S.O. 1908 (E) dated 17th August 2011 as ultra vires to the Constitution of India, 1950.

(C) Be pleased to quash and set aside the Notification dated 17th August 2011 empowering the Tribunal at Pune, to the extent of the jurisdiction to hear the cases of State of Gujarat being conferred on the Tribunal at Pune.

(D) Be pleased to direct Respondent No.1 Union of India to establish National Green Tribunal under National Green Tribunal Act, 2010 at seat of High Court in State of Gujarat for Gujarat State.

(E) Costs of this Petition be awarded.”

2. At the outset, we may state that Mr.Masoom K.Shah, the learned counsel appearing for the writ-applicant, made himself clear that he would not be pressing for the reliefs in terms of paragraphs 12(A) and 12(B) respectively and would like to confine his case to seeking appropriate order from this Court as regards suggesting to the National Green Tribunal to setup a circuit bench in the State of Gujarat.

3. The facts giving rise to this writ-application may be summarised as under :

4. The writ-applicant is a society registered under the Societies Act, 1962, and the Trusts Act, 2001, respectively. The writ-applicant claims to be an organization functioning for the welfare of the consumers. The writ-applicant has 47 branches across the State of Gujarat. It is further pointed out that in the past the writ-applicant had filed many important writ-applications in this High Court in public interest.

5. It is the case of the writ-applicant in public interest that the National Green Tribunal has its circuit benches at Jodhpur, Shimla and Shillong respectively. However, the National Green Tribunal should also consider having one circuit bench in Ahmedabad, State of Gujarat. The writ-applicant has taken up this issue considering that any litigation relating to the environment and falling within the ambit of the National Green Tribunal Act, 2010, arising within the State of Gujarat has to be taken to Pune, State of Maharashtra, which is almost at a distance of more than 700 kms.

6. It is the case of the writ-applicant that the people of Gujarat find it very difficult and cumbersome to travel all the way to Pune and engage lawyers of a different State.

7. In the aforesaid context, our attention was drawn to Section 4 of the Act 2010, which falls in Chapter-II. Chapter-II of the Act 2010 provides for the establishment of the Tribunal. Section 4 reads thus :

“4. Composition of Tribunal. -

(1) The Tribunal shall consist of,-

(a) a full-time Chairperson;

(b) not less than ten but subject not maximum of twenty full-time Judicial Members as the Central Government may, from time to time, notify;

(c) not less than ten but subject to maximum of twenty full-time Expert Members, as the Central Government may, from time to time notify.

(2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

(3) The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including:-

(a) the rules as to the persons who shall be entitled to appear before the Tribunal;

(b) the rules as to the procedure for hearing applications and appeals and other matters [including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3)], pertaining to the applications and appeals;

(c) 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;

(d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.”

8. Thus, the plain reading of the aforesaid provision would indicate that the Central Government, by notification, may specify the ordinary place or places of sitting of the Tribunal and also the territorial jurisdiction falling under each such place of sitting. The Central Government, in consultation with the Hon'ble Chairperson of the Tribunal, may make rules as to the procedure for hearing applications and appeals including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3) pertaining to the applications and appeals.

9. Our attention was thereafter drawn to the notification issued by the Ministry of Environment and Forests dated 17th

August 2011. This notification was issued in exercise of powers conferred by sub-section (3) of Section 4 of the Act, 2010, specifying the following ordinary places of sitting of the Tribunal. We quote thus :

**“MINISTRY OF ENVIRONMENT AND FORESTS
NOTIFICATION
New Delhi, the 17th August 2011**

S.O. 1908(E).--In exercise of powers conferred by sub-section (3) of Section 4 of the National Green Tribunal Act, 2010 (19th of 2010), the Central Government hereby specifies the following ordinary places of sitting of the National Green Tribunal which shall exercise jurisdiction in the area indicated against each :-

<i>Sr. No.</i>	<i>Zone</i>	<i>Place of Sitting</i>	<i>Territorial Jurisdiction</i>
1.	Northern	Delhi (Principal place)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National Capital Territory of Delhi and Union Territory of Chandigarh.
2.	Western	Pune	Maharashtra, Gujarat, Goa with Union Territories of Daman and Diu and Dadra and Nagar Haveli.
3.	Central	Bhopal	Madhya Pradesh, Rajasthan and Chattisgarh.
4.	Southern	Chennai	Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Pondicherry and Lakshadweep.
5.	Eastern	Kolkata	West Bengal, Orissa, Bihar, Jharkhand, Seven Sister States of North-Eastern Region, Sikkim, Andaman and Nicobar Islands.

10. Thereafter, our attention was drawn to the National Green Tribunal (Practices and Procedures) Rules, 2011, framed in exercise of the powers conferred by sub-section 4 of Section 4 read with Section 35 of the Act, 2010. Rules 3, 4 and 6 respectively of the said Rules read thus:

“3. Distribution of business amongst the different ordinary place or places of Sittings of Tribunal.-

(1) The Chairperson may constitute a bench of two or more members consisting of at least one Judicial Member and one Expert Member.

[Provided that in exceptional circumstances the Chairperson may constitute a single Member Bench].

(2) The Chairperson shall have the power to decide the distribution of the business of the Tribunal amongst the members of the Tribunal sitting at different places by order and specify the matters which may be dealt with by each such sitting in accordance with the provisions of clause (d) of sub-section (4) of section 4 of the Act.

(3) If any question arises as to whether any matter falls within the purview of the business allocated to a place of sitting, the decision of the Chairperson shall be final.”

*“4. **Circuit procedure.**- The Chairperson may, by general or special order, decide the cases or class of cases for which circuit procedure may be adopted by the Tribunal under clause (b) of sub-section (4) of section 4 of the Act and may delegate such powers to a Judicial Member as he may deem fit.”*

*“6. **Sitting at place other than the place where it shall ordinarily sit.**- If at any time the Judicial Member of Tribunal is satisfied that circumstances exist which render it necessary to have its sitting at any place, other than the place at which it ordinarily sits, falling within its territorial jurisdiction, he may with the previous approval of the Chairperson direct that the sitting shall be held at any such appropriate place.”*

11. Thus, rule 4 referred to above would indicate that the Hon’ble Chairperson of the Tribunal may, by general or special order, decide the cases or class of cases for which circuit procedure may be adopted by the Tribunal under clause (b) of sub-section (4) of Section 4 of the Act, 2010.

12. As stated above, the Hon’ble Chairperson of the National Green Tribunal has established circuit benches at Jodhpur, Shimla and Shillong respectively. The case put up by the writ-applicant is that the Hon’ble Chairperson of the National Green Tribunal may consider establishing a circuit bench of the Tribunal at Ahmedabad, State of Gujarat.

13. We have heard Mr.Masoom Shah, the learned counsel appearing for the writ-applicant, Mr.Devang Vyas, the learned Additional Solicitor General of India appearing for the Union of India, Mr.Nachiket Dave, the learned counsel appearing for the National Green Tribunal and Mr.Chintan Dave, the learned AGP appearing for the State of Gujarat.

14. Mr.Shah, the learned counsel appearing for the writ-applicant would submit that the Supreme Court, in the case of Subhash Kumar vs. State of Bihar and others, reported in AIR 1991 SC 420, has held that the right to life under Article 21 of the Constitution of India is a fundamental right and includes the right to free water and pollution free air for the full enjoyment of life. In other words, Article 21 of the Constitution of India includes the right to a healthy environment. The Supreme Court has held that Article 21 includes “the enjoyment of pollutant free water and air for full enjoyment of life”.

15. It is argued that any aggrieved party residing in a remote place within the State of Gujarat may not be asked to travel 700 kms. to Pune, State of Maharashtra, for redressal of any grievance relating to environment. It is argued that the poor and tribal who may be wanting to raise environmental issues would find it very difficult to travel such a long distance and engage an advocate.

16. In the aforesaid context, Mr Shah invited the attention of this Court to a decision of the Supreme Court in the case of Swiss Ribbons vs. Union of India, reported in (2019) 4 SCC 17, more particularly, the observations made in paragraphs 32 and 33 respectively. We quote paragraphs 32 and 33 thus :

“32. It has been argued by Shri Rohatgi that as per our judgment in Madras Bar Association (2) [Madras Bar Assn. vs. Union of India, (2014) 10 SCC 1], paragraph 123 states as follows :

“123. We shall first examine the validity of Section 5 of the NTT Act. The basis of challenge to the above provision has already been narrated by us while dealing with the submissions advanced on behalf of the petitioners with reference to the fourth contention. According to the learned counsel for the petitioners, Section 5(2) of the NTT Act mandates that NTT would ordinarily have its sittings in the National Capital Territory of Delhi. According to the petitioners, the aforesaid mandate would deprive the litigating assessee the convenience of approaching the jurisdictional High Court in the State to which he belongs. An assessee may belong to a distant/remote State, in which eventuality, he would not merely have to suffer the hardship of travelling a long distance, but such travel would also entail uncalled for financial expense. Likewise, a litigant assessee from a far-flung State may find it extremely difficult and inconvenient to identify an Advocate who would represent him before NTT, since the same is mandated to be ordinarily located in the National Capital Territory of Delhi. Even though we have expressed the view, that it is open to Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts

and constitute courts/tribunals to exercise the said jurisdiction, we are of the view, that while vesting jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure that redress should be available with the same convenience and expediency as it was prior to the introduction of the newly created court/tribunal. Thus viewed, the mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy in-efacacious, and thus unacceptable in law. The instant aspect of the matter was considered by this Court with reference to the [Administrative Tribunals Act, 1985](#) in [S.P. Sampath Kumar case \[S.P. Sampath Kumar v. Union of India, \(1987\) 1 SCC 124 : \(1987\) 2 ATC 82\]](#) and [L. Chandra Kumar case \[L. Chandra Kumar v. Union of India, \(1997\) 3 SCC 261 : 1997 SCC \(L&S\) 577\]](#), wherein it was held that permanent Benches needed to be established at the seat of every jurisdictional High Court. And if that was not possible, at least a Circuit Bench required to be established at every place where an aggrieved party could avail of his remedy. The position on the above issue is no different in the present controversy. For the above reason, Section 5(2) of the NTT Act is in clear breach of the law declared by this Court.”

33. The learned Attorney General has assured us that this judgment will be followed and Circuit Benches will be established as soon as it is practicable. In this view of the matter, we record this submission and direct the Union of India to set up Circuit Benches of the NCLAT within a period of 6 months from today.”

17. Mr. Shah, by placing reliance on the above referred decision of the Supreme Court, would submit that there should not be any different criteria for the National Green Tribunal compared to the NCLAT and NTT. Mr. Shah laid much emphasis on the fact that permanent benches are required to be established at the sitting of every jurisdictional High Court and, if that is not possible, at least a circuit bench should be established within the State of Gujarat preferably at Ahmedabad so that an aggrieved party can avail of his remedy without undergoing any hardships or difficulties.

18. In the aforesaid context, we may first look into the stance of the Union of India as reflected from the affidavit-in-reply, more particularly, the following averments :

“10. That sub-section 3 of Section 4 of the NGT Act, 2010, provides that the Central Government shall specify the ordinary place or places of sitting of the NGT and territorial jurisdiction thereof. In terms of the said provisions of the NGT Act, the Central Government has issued Notification S.O. (E) dated 17th August 2011 and five Zonal Benches comprising territorial jurisdiction at Delhi, Pune, Bhopal, Chennai and Kolkata were notified.

That there is no infirmity in the Notification dated 17th August 2011 relating the jurisdiction of Pune Bench of the NGT. The place of sitting of the Tribunal was a conscious decision by the Central Government keeping in view the proximity to the States and access to public to the places of sitting. Further, it is worth to mention that the Hon'ble Supreme Court of India vide its order dated 9th August 2012 in WP(C) No. 50 of 1998 titled Bhopal Gas Peedith Mahila Udyog Sangathan & Ors. vs. Union of India has inter alia, stated that "keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 particularly Sections 14, 29, 30 and 38(5), the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal".

19. No reply has been filed on behalf of the Tribunal.

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the relief as prayed for and pressed in the present writ-application is in the larger public interest ?

21. We are of the view, having regard to the decision of the Supreme Court in the case of Swiss Ribbon (supra), that the Central Government as well as the National Green Tribunal should deliberate on the issue of setting up a circuit bench of the Tribunal at Ahmedabad, State of Gujarat. We request the Central Government as well as the Hon'ble Chairperson of the Tribunal to consider this issue in the larger public interest and take an appropriate decision.

22. We may only observe that it will be in the fitness of things if a circuit bench is established in Ahmedabad, State of Gujarat.

23. With the aforesaid, this writ-application stands disposed of.

(J. B. PARDIWALA, J.)

(VAIBHAVI D. NANAVATI, J.)

/MOINUDDIN