

**MUNICIPAL CORPORATION OF GREATER MUMBAI V. ANKITA SINHA:
SUPREME COURT ON *SUOMOTU* POWER OF THE
NATIONAL GREEN TRIBUNAL**

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I. Introduction

ON OCTOBER 7, 2021 the Supreme Court in the case of *Municipal Corporation of Greater Mumbai v. Ankita Sinha*¹ (hereinafter referred as *Ankita Sinha Case*) settled the question of law regarding the *suo motu* powers of the National Green Tribunal (NGT). The issue of NGT's *suo motu*² cognizance has been a subject of debate³, challenge⁴ and appeal⁵ since its inception. Initially, the NGT acknowledged the statutory limitation of not being expressly vested with *suo motu* powers⁶. However, the NGT proceeded to take up cases *suo motu* relating to activities causing environmental deterioration, despite the lack of explicit powers.

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¹ 2021 SCC OnLine SC 897

² The first *suo motu* initiation was in 2012 by the Southern Bench of the National Green Tribunal.

³ Nitin Sethi, "Green tribunal does not have powers to act suo motu, says govt.", *The Hindu*, September 11, 2013, available at: <https://www.thehindu.com/news/national/green-tribunal-does-not-have-powers-to-act-suo-motu-says-govt/article5118106.ece> (last visited on March 10, 2022).

⁴ The initial *suo motu* initiations by the Southern Bench of the National Green Tribunal was curtailed by the Madras High Court in 2014 holding that NGT has no such power either under its parent Act or under its Rules. See A. Subramani, "Green tribunal's wings clipped, Madras High Court halts suo motu proceedings", *The Times of India*, January 03, 2014, available at: <https://timesofindia.indiatimes.com/city/chennai/Green-tribunals-wings-clipped-Madras-high-court-halts-suo-motu-proceedings/articleshow/28346066.cms> (last visited on March 10, 2022).

⁵ *LG Polymers (India) (P) Ltd. v. A.P. Pollution Control Board*, (2020) 6 SCC 622.

⁶ *Baijnath Prajapathi v. Ministry of Environment and Forest*, 2012 SCC OnLine NGT 21, para. 19.

From 2010 to 2020, the NGT took up around 136 *suo motu* cases, citing the rationale that “...irretrievable damage to the environment is not acceptable...”.⁷ According to former NGT Chairperson, Justice Swatantra Kumar, *suo motu* initiation is an “inherent” power of the NGT and is “integral” to its “effective functioning”.⁸ Despite the debates and challenges surrounding its jurisdiction, the NGT has continued to assert its *suo motu* powers, recognizing the need to address environmental issues that may otherwise go unnoticed or unaddressed.

In the *Ankita Sinha Case*, the Supreme Court (Court) upheld the *suo motu* powers of NGT while interpreting the expanse of its powers and functions.⁹ The judgement affirmed NGT’s legal justification and interpretation in initiating *suo motu* proceedings.¹⁰ The Supreme Court discussed the legislative intent behind the establishment of the NGT and interpreted the provisions of the National Green Tribunal Act, 2010¹¹ (NGT Act, 2010) to uphold *suo motu* powers of the NGT.¹²

The judgement in the *Ankita Sinha case* is significant as it reaffirms the importance of the NGT in protecting the environment and upholding environmental laws. The NGT has been established as a specialized court to deal with environmental disputes and its *suo motu* powers are crucial in ensuring that environmental violations are addressed promptly and effectively.

II. Facts of the case

An article published in The Quint titled “Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade”¹³ revealed the maladministration and unscientific handling of solid waste in the Deonar dump of Greater Mumbai. The NGT, Principal Bench took cognisance of the published article and instituted a *suo motu* investigation into whether solid waste

⁷ *Tribunal on its own motion v. State of Himachal Pradesh*, 2014 SCC OnLine NGT 1 at 19.

⁸ Yukti Choudhary, “Tribunal on Trial”, *Down to Earth*, November 30, 2014, available at: <https://www.downtoearth.org.in/coverage/tribunal-on-trial-47400> (last visited on March 10, 2022).

⁹ *Supra* note 1 at para. 34, the Supreme Court observes “.....the role of a spectator.....would most assuredly result in injustice.”

¹⁰ For recent case law of NGT’s rationale on *suo motu* initiations, see *LG Polymers India v. Union of India*, 2020 SCC OnLine NGT 129.

¹¹ The National Green Tribunal Act, 2010 (Act 19 of 2010).

¹² *Supra* note 1 at para. 37.

¹³ Ankita Sinha, “Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade”, *The Quint*, August 04, 2018, available at: <https://www.thequint.com/explainers/garbage-business-in-deonar-dumping-ground-rag-pickers-businessmen-and-mafia> (last visited on March 10, 2022).

management in the Deonar dump of Greater Mumbai complied with the Solid Waste Management Rules, 2016. Through an order,¹⁴ NGT directed the reporter of the article in The Quint, Ms Ankita Sinha to be the applicant in the matter and issued notices to the State of Maharashtra and other concerned statutory bodies including the Municipal Corporation of Greater Mumbai (MCGM).

To investigate the issue, the NGT constituted a committee comprising representatives of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area, and the MCGM. Based on the report of the committee, the NGT found that the landfill site in question was in complete violation of the provisions of Municipal Solid Waste Rules, 2016 resulting in damage to the environment and public health. Based on the findings of the committee, NGT imposed an interim compensation of rupees five crores on MCGM for not carrying out its statutory duty of implementing the Solid Waste Management Rules, 2016.¹⁵ Aggrieved by the order of the NGT to impose compensation of rupees five crores the MCGM filed a statutory appeal before the Court.¹⁶

III. Contentions and Arguments before the Supreme Court

Admitting the appeal of MCGM, the Court stayed the order of the NGT and tagged all the pending similar matters to address the common question of *suo motu* jurisdiction of NGT. The appellant, MCGM had raised several contentions with regard to the *suo motu* powers of NGT. Foremost it contended that NGT is a creature of the statute and as such is bound to operate within the ambit of its provisions. It cannot act on its own. MCGM further contended that in taking up *suo motu* initiations NGT could not assume inherent powers granted to the constitutional courts under articles 32¹⁷ and 226¹⁸ of the Constitution of India.

Furthermore, NGT had a limited adjudicatory role; therefore, it could not proceed with a matter unless there was a dispute between two contesting parties. Moreover, the fact that the general power of judicial review was absent in the NGT Act, 2010, implied legislative intent

¹⁴*Ankita Sinha v. State of Maharashtra*, (NGT Order dated August 07, 2018)

¹⁵*Ankita Sinha v. State of Maharashtra*, (NGT Order dated October 30, 2018)

¹⁶*Municipal Corporation of Greater Mumbai v. Ankita Sinha*, Civil Appeal No. 86 of 2019.

¹⁷ The Constitution of India, art. 32 provides 'the right to move to the Supreme Court' for 'enforcement' of fundamental rights and the Supreme Court has 'the power to issue directions or orders or writs'

¹⁸ The Constitution of India, art. 226 provides power to the High Courts to 'issue to any person or authority, including in appropriate cases, any Government' within its respective jurisdiction 'directions, orders or writs' for enforcement of fundamental rights.

to keep *suo motu* powers away from the NGT. MCGM further contended that if the NGT was to have *suo motu* powers, it would amount to the NGT being a judge in its own cause, which is against the principles of natural justice.

The Central Government as well as the *Amicus Curiae* were of the unanimous view that the NGT had no *suo motu* powers. The Central Government contended that NGT could not exercise *suo motu* powers as the legislature did not intend to confer such powers on it. This is reflected through the absence of its express provision under the NGT Act, 2010 as was in the case of NGT's predecessor, the National Environment Tribunal¹⁹ which was expressly vested with the discretion to take matters *suo motu*.²⁰

It contended that the concept of *locus standi*²¹ under the NGT Act, 2010²² extended the jurisdiction of the NGT but it did not encompass the *suo motu* initiation as exercised by the constitutional courts. The *Amicus Curiae* and the Additional Solicitor General argued that the NGT can still intervene in cases of a letter from the "interested party"²³ but it cannot initiate proceedings *suo motu*. Both the respondent parties raised concerns that allowing the NGT to do so could result in the NGT being seen as a judge in its own cause, which could compromise its impartiality.

IV. Issues before the Supreme Court

The counsel challenging *suo motu* jurisdiction exercised by the NGT put forward three key arguments, which are briefly summarized below.

- (i) NGT is a creature of the statute, the NGT Act, 2010. Its authority is therefore confined to the limits prescribed by the NGT Act, 2010 which did not confer NGT *suo motu* powers. NGT, being a statutory body therefore cannot act beyond the ambit of the legislative framework which established it.
- (ii) For NGT to adjudicate on substantial questions relating to the environment, there must be a dispute between two contesting parties and that dispute must be capable

¹⁹ Constituted under the National Environment Tribunal Act (Act 27 of 1995), 1995, s. 8.

²⁰ The National Environment Tribunal Act (Act 27 of 1995), 1995, s. 4(2).

²¹ *Supra* note 1 at para.9.

²² *Supra* note 11, s. 18(2) (e).

²³ *Supra* note 1 at para. 8.

of being settled. NGT can only spring to action in the case of a dispute settlement, which requires two contesting parties as a pre-requisite.

- (iii) Constitutional courts are conferred with *suo motu* powers under articles 32 and 226 to safeguard fundamental rights and therefore can undertake judicial review. The absence of general power of judicial review with the NGT is reflective of the legislative intention to not confer *suo motu* powers to the NGT.

V. Analysis of the Judgement

The *Anita Sinha Case* can be analysed in three broad parts. In the first part, the Court looked at the legislative intent behind the establishment of the NGT, as a specialized environmental court. It argued for a broad interpretation of the jurisdiction of the NGT by analysing the Preamble and the Statement of Objects and Reasons of the NGT Act, 2010, as well as the 186th Report of the Law Commission of India.²⁴ In the second part of the judgement, the Court accorded the NGT Act, 2010 a purposive interpretation to examine the extent of the powers and jurisdiction of the NGT. It examined key segments of the NGT Act, 2010 to argue for broad discretionary powers of the NGT, beyond merely its adjudicatory functions.

It drew from the *precautionary principle*, conceptual frameworks of environmental justice and environmental equity, the scope of article 21 of the Constitution, and the uniqueness of the NGT in comparison to other tribunals to establish *suo motu* jurisdiction of the NGT in the first and second parts of the judgement. In the third part of the judgement, the Court defined the ambit and scope of application of *suo motu* jurisdiction by the NGT.

Legislative Intention: Power of NGT and Judicial Review

In order to understand the history and purpose behind the establishment of the NGT, the Court analysed the contents of the 186th Report of the Law Commission of India, and the Preamble of the NGT Act, 2010. It observed that the NGT was established to address the limitations of constitutional courts, which are unable to “make local enquiries or receive evidence”²⁵ or have “access to expert environmental scientists on a permanent basis”²⁶. The

²⁴ Law Commission of India, “186th Report on Proposal to Constitute Environment Courts” (September, 2003).

²⁵ *Supra* note 1 at para. 13.3.

²⁶ *Ibid.*

limited and narrow scope of its predecessors, the National Environment Tribunal and the National Environmental Appellate Authority, also prompted the establishment of the NGT.²⁷ Additionally, the NGT was created to meet international commitment towards effective judicial access for environmental damage,²⁸ and to fulfil the Constitutional mandate of the right to a healthy environment under article 21 of the Constitution.²⁹

The Court observed that an institution concerned with the Right to Life,³⁰ and borne out of an outcome of an international commitment under the United Nations Conference on Environment and Development (UNCED), 1992, was entitled to a more “liberal” interpretation of its jurisdiction.³¹ It observed that the law was enacted with the objective of not merely preventing damage to the environment, but also protecting it.³² Therefore, the Court was of the opinion that the institution merited a wide interpretation of its jurisdiction and that it ought to be considered a *sui generis* forum.³³ It is essential for NGT to have *sui generis* powers. As environmental issues and complexities are rapidly evolving an institution providing judicial and technical expertise for the environment’s protection and preservation must have a flexible institutional mechanism like *suo motu* to address and curb these issues.

The Court observed that the Parliament intended to confer a wide jurisdiction and broad range of powers³⁴ on the NGT so that it could deal with issues that were being dealt with by the High Courts³⁵ or the Supreme Court³⁶. It concluded, therefore, that the NGT should have similar powers to initiate *suo motu* proceedings.

The Court clarified the legislative intent for omitting the power of judicial review from NGT. A key argument of the counsel challenging NGT’s *suo motu* jurisdiction was that the absence of the power of judicial review with the NGT reflected legislative intent to curb *suo motu* powers. The Court stated that the absence of the power of judicial review ensured non-interference of the High Courts with NGT’s orders before attaining finality. Additionally, it

²⁷ *Supra* note 1 at para. 14.1.

²⁸ *Supra* note 1 at para. 14.5.

²⁹ *Ibid.*

³⁰ The Constitution of India, art. 21 states: ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’.

³¹ *Supra* note 1 at para. 14.4.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Supra* note 1 at para. 17.1.

³⁵ The Constitution of India, art. 226.

³⁶ The Constitution of India, art. 32.

empowered the NGT to make its own rules and regulations and not be bound by the principles of evidence,³⁷ which in turn shaped a more efficient and effective functioning of the NGT.

Role of NGT: Not only adjudicatory but also regulatory, preventive, remedial and amelioratory

The principle of purposive interpretation involves interpreting a statute in a way that aligns with the underlying purpose or intention of the statute. This means that when interpreting a statute, a court should consider not only the literal meaning of the words, but also the context, background, and purpose of the statute.

The Court observed that since NGT Act, 2010 was intended to address social issues, it ought to be given a purposive interpretation. While explaining the tenets of purposive interpretation, the Court observed that to understand the entire framework of the statute, it is important to read the statute as a whole with a focus on its scope and the “mischief” which the statute “intended to remedy”³⁸. In the context of the NGT Act, 2010, the Court stated that the provisions of the NGT Act, 2010 should lean towards suppression of mischief and the advancement of remedy,³⁹ as required by Heydon’s rule⁴⁰ of interpretation of a statute. NGT must have the power to curb the “mischief” for advancing remedy.

Overall, the Court’s observation highlights the importance of interpreting statutes in a way that aligns with their underlying purpose and promotes the intended remedy. In the context of the NGT Act, 2010, this means that the NGT should have the power to curb the “mischief”, which is environmental degradation, for advancing remedy, which is the protection and preservation of the environment.

While interpreting the powers of NGT, the Court held that it had been vested with a wide array discretionary of powers to *secure the ends of justice*⁴¹ under rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011. The Court explained that securing

³⁷ *Supra* note 1 at para. 13.5.

³⁸ *Supra* note 1 at para. 15.1.

³⁹ *Supra* note 1 at para. 15.3.

⁴⁰ *Bengal Immunity Company v. State of Bengal*, AIR 1955 SC 661.

⁴¹ *Supra* note 1 at para.16.4.

justice is a term of wide amplitude, which means that it encompasses more than just adjudicating disputes between two rival entities. It includes advancing environmental rights, providing compensation to victims of calamities, creating schemes to implement environmental principles, and even holding authorities accountable for their inaction.

The Court identified *locus standi* and the power to grant relief not specifically prayed for as two distinguished features of the NGT that facilitates securing the ends of justice. It held that the *locus stand* powers of NGT are as wide as that of the constitutional courts,⁴² and its discretionary power to grant relief that is not even specifically prayed for⁴³ is the widest power to encompass any relief.

While dealing with the argument of the NGT's powers being limited to adjudication, the Court observed that the Parliament intended to confer wide jurisdiction on the NGT, on the basis of which it held that the NGT was expected to take preventative action as a specialised forum.⁴⁴ The preventative role of the NGT is mandated under section 20 of the NGT Act, 2010, which requires it to apply the *precautionary principle* while dealing with environmental issues. NGT is mandated to carry out "distributive and corrective justice" for environmental compensation and devise a plan to reduce the damage, even in cases wherein the damage is accrued on account of natural calamities.⁴⁵

The Court also commented on the existing inequalities in society, in general, and in access to justice, in particular. The court highlighted that substantive justice has to be delivered for the marginalised sections of society and procedural lacunas cannot be allowed to enhance the inequalities already persisting in society.⁴⁶ The Court emphasised that the Tribunal is required to deliver environmental solutions to grave environmental issues which have a possibility of hampering larger public interest and ensure substantive justice is secured for the marginalised section of the society, in the spirit of environmental equity and justice.⁴⁷ In this context, the Court held it directed that the environmental rule of law be encapsulated in the making of NGT, as this principle has been not only key to achieving the ends of sustainable

⁴² *Supra* note 1 at para. 16.6.

⁴³ *Supra* note 1 at para. 16.5.

⁴⁴ *Supra* note 1 at para. 17.3.

⁴⁵ *Supra* note 1 at para 18.

⁴⁶ *Supra* note 1 at para 27.3.

⁴⁷ *Ibid.*

development but also to securing the very sustainability of the environmental legal order.⁴⁸ The Court observed that functions like these do not necessarily require a dispute to be raised by contesting parties.⁴⁹

The Court observed that the NGT held a *sui generis* role; it was established to take over all environmental cases before itself and the High Courts. Most of the cases before these courts were initiated *suo motu*, so their transfer would imply possession of *suo motu* powers with the NGT too. The Court relying on *DG NHAI v. Aam Aadmi Lokmanch*⁵⁰ upheld NGT's *sui generis* characteristic of NGT by reiterating its powers to be "reflexive", "remedial" and "preventive"⁵¹. It upheld the all-encompassing jurisdiction of the NGT. It also held that besides its adjudicatory role as an appellate authority, it has a responsibility to address substantial questions relating to the environment as a supervisory body.⁵² To effectively address multi-dimensional environmental issues, the NGT must have a flexible institutional mechanism in place to support its exercise of power.⁵³

Section 14 of the NGT Act accords original jurisdiction to the court to deal with cases involving substantial questions related to the environment, besides those dealing with enactments mentioned in Schedule I to the act.⁵⁴ While dealing with the scope of section 14 held that section 14(1) of the NGT Act is a standalone provision as it is not restricted in scope by subsequent provisions, which allows NGT to intervene wherever its intervention is warranted or where the exigency of the situation requires such intervention.⁵⁵ Such intervention is not dependent on receipt of application. Moreover, the use of "decision", in addition to "order" and "award" in section 20 of the NGT Act, which reflects the intention of legislature to accord a wide jurisdiction to NGT to perform beyond adversarial role.⁵⁶

While drawing out a comparison of NGT's jurisdiction with that of a civil court, the court acknowledged that "the concept of lis" as applicable to an environmental court like NGT is

⁴⁸ *Supra* note 1 at para 28.8.

⁴⁹ *Supra* note 1 at para. 18.

⁵⁰ 2020 SCC OnLine SC 572

⁵¹ *Supra* note 1 at para. 24.3.

⁵² *Supra* note 1 at para. 24.5.

⁵³ *Ibid.*

⁵⁴ *Supra* note 1 at para. 25.3.

⁵⁵ *Supra* note 1 at para. 25.4.

⁵⁶ *Supra* note 1 at para 25.6.

beyond the scope of ordinary civil cases.⁵⁷ Consequently, the NGT, unlike civil courts, has been given powers to mould and venture outside the scope of the relief that is sought by the parties. Therefore, the Court observed that the ambit of NGT's jurisdiction is beyond the ordinary jurisdiction exercised by the civil courts.⁵⁸

Also, the Court drew on the uniqueness of the NGT compared to other tribunals to advocate for its broader powers.⁵⁹ It reiterated NGT's duty to safeguard article 21 rights, thereby advocating for its *suo motu* powers towards the protection of the right to a clean environment.⁶⁰

Scope of exercise of *suo motu*: Defined

The Court upheld the *suo motu* powers of the NGT. It held that since *suo motu* initiations by NGT was a society-centric approach, it must be allowed to be exercised. The Court acknowledged the possible menace of the *suo motu* jurisdiction if NGT acted beyond its domain, and broadly defined the ambit of the scope of its operations.⁶¹ The Court held that the NGT can take up a case *suo motu* only for two purposes: (i) amelioration, and (ii) prevention of harm.

Therefore, *suo motu* jurisdiction can only be exercised to either restore or revive the environment or in the event of anticipated harm. To ensure that such exercise is carried out within the realm of NGT, its prerequisites were set to include only issues that raise "substantial questions relating to the environment", that are civil in nature and that arise from any of the Scheduled enactments.⁶² To ensure that *suo motu* initiations do not cause undue suffering to any party, the Supreme Court upheld the "principles of natural justice" and the "fair play"⁶³ towards the exercise of *suo motu* jurisdiction.

⁵⁷ *Supra* note 1 at para. 17.3

⁵⁸ *Supra* note 1 at para. 16.5

⁵⁹ *Supra* note 1 at para. 22.1.

⁶⁰ *Supra* note 1 at para. 25.7.

⁶¹ *Supra* note 1 at para. 38.

⁶² *Supra* note 1 at para. 25.3.

⁶³ *Supra* note 1 at para. 37.

VI. Implications of the Judgement

Access to justice is not equal, and environmental equity highlights the human aspect while ensuring that environmental harms and protections are equally distributed among all without discrimination. The judgement in the *Ankita Sinha Case* not only bids adieu to the constant challenge and appeals against the *suo motu* initiations but also eliminates the need for financial or otherwise means, especially of the marginalised section of society, to access environmental justice. It accords greater self-determination and reassurance to the NGT in exercising *suo motu* powers on an exigent issue.

The baton has been passed to NGT by the Court, having outlined the borders of exercise of *suo motu* jurisdiction, to now devise and define the delineations of the criteria and procedure for *suo motu* cases. The adoption of defined criteria and procedures would minimise the discretion and arbitrariness across NGT Benches to adopt more uninhibited *suo motu* initiations.

The Court has, time and again, reiterated its intention to adopt forward-looking measures for upholding environmental rule of law and securing substantive justice for the marginalised sections of society. Such intentions are reflected in the making of NGT, itself, which has contributed to it receiving international laurels. The Court's decision to uphold the *suo motu* powers of the NGT will inspire confidence in environmental justice in this country. More importantly, *suo motu* initiations will facilitate access to environmental justice by eliminating the need to approach the forum in the first place. Every single environmental court or tribunal across the globe aspires to achieve this. It is now largely up to the NGT to determine the full scope and reach of this power.