

PERSPECTIVES



Scorched Earth

The suffocation of the National Green Tribunal

/ Law

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At first light one day in July last year, Shivpal Bhagat packed his modest holdall and caught the first bus out of Kosampali—an Adivasi village in Chhattisgarh's Raigarh district, fragmented by three coal mines and two power plants. After two hours of trailing coal trucks through patches of sal forest, Bhagat alighted at the Raigarh railway station, and boarded a cramped train to Bilaspur, another two hours away. With afternoon wearing on, he caught the Chhattisgarh Express to Bhopal. The next morning, having crossed the state border into Madhya Pradesh, the train approached Bhopal. Bhagat changed into a white shirt as the train pulled into the city, then squeezed into a shared auto for the last stretch of his journey. Finally, more than a full day after he left home, he arrived at the Bhopal branch of the National Green Tribunal, the country's only court dedicated to environmental issues.

Bhagat, the sarpanch of Kosampali and an Adivasi himself, is no stranger to the courts. For years, Raigarh's residents have resisted the exploitation of the area's massive coal reserves by public and private companies given permission to mine and generate power here by the central government. Getting at the coal often means stripping away forests, farmland and homes, with devastating environmental consequences even before the pollution from the coal dust, fly ash and contaminated runoff that accompanies mines and power plants. Bhagat has long been part of the resistance, in court and on the ground,

and has had to fight multiple cases filed against him by the companies, as well as state authorities. This court date, however, was unusual. For the first time, Bhagat would be appearing not before a judge of the NGT in Bhopal, but on camera, via videoconference, before the NGT's principal bench in Delhi.

The case in question, file by Bhagat and several co-petitioners, involved the Gare Pelma IV/2&3 mining complex. The complex was operated by Jindal Steel and Power, but, in the aftermath of a 2014 ruling by the Supreme Court that cancelled all prior coal-block allocations, the government handed custody of it to a public company, Coal India. During the video hearing, the Delhi bench accepted that mining at the complex had devastating health effects. It noted that the project did not have the consent of affected villagers, and that in many cases it was situated barely ten metres from their homes. Earlier, the NGT had directed a joint committee with representatives from the coal and environment ministries to prepare a report on the matter. Now, the bench accepted the report's recommendation for measures to contain pollution, as well as the recommendation that JSPL and Coal India be fined ₹5 crore each. It ordered "that the recommendations be given effect to in letter and spirit and in a time bound manner," but it did not specify any deadline, leaving the companies free to act at their own pace while the mining continued.

Environmental justice has always been dauntingly remote for Bhagat and his village, both figuratively and



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physically. "We went wearing chap-pals," Bhagat said, but the lawyer for JSPL was wearing suits worth many thousands of rupees. "Everything he was wearing was special." The villagers "don't have the money to pay a lawyer's



LEFT: The people of Kosampali are reeling under the impact of three coal mines and two power plants in the village.

Bhagat appeared before a live court until, in October 2017, the last judge to sit there was transferred to Delhi. Now petitioners from the three states address themselves remotely to a judge in the national capital.

Videoconferencing has become a feature of many Indian courts in recent years. The Supreme Court, for example, allows witnesses to testify on live camera in a growing variety of cases. But while this is seen as a welcome innovation in some courts—cutting down delays from waiting for witnesses to appear in person—in the environmental courts, it papers over a festering crisis. The NGT has been crippled by a lack of judicial appointments by the Modi government. Its regional benches have been rendered defunct, and the system of environmental justice has come to a near-complete halt. Videoconferencing with Delhi has kept some cases limping along, but most proceedings are inordinately delayed, and the list of pending cases is getting longer and longer. By its own count, at the end of this May, the NGT had 2,821 cases pending before it. Meanwhile, in most instances, the environmental destruction these cases are meant to address continues unhindered.

fees, or the money to cover our costs up and down.” Since the case began, in 2014, Bhagat had travelled the eight-hundred-plus kilometres to Bhopal four times, supported by community collections towards the case in Raigarh.

There is no closer option—the Bhopal branch of the NGT has jurisdiction over all of Chhattisgarh, Madhya Pradesh and Rajasthan, host to many of the country’s most polluting mines and industrial facilities. At the Bhopal bench,

The National Green Tribunal Act, which created the NGT in 2010, stipulates that the tribunal must have, at any given time, between ten and twenty full-time judicial members, and between ten and twenty full-time expert

members, “as the Central government, may, from time to time, notify.” To improve access, on paper the NGT has four regional benches—in Bhopal, Chennai, Kolkata and Pune—as well as four circuit benches—in Shimla, Shillong, Jodhpur and Kochi. For a bench to function, it needs at least one dedicated judicial member and an expert member. The Bhopal bench currently has a judge assigned to it, who sits in Delhi, but has no dedicated expert.

In August 2017, the NGT had only eight judicial members, including its chairperson, and just six expert members. When an advocate alerted the Delhi High Court to the shortage, it asked the central government, “Would you like to wind up the National Green Tribunal?” When the NGT’s chairperson stepped down in December 2017, the tribunal was left headless. The NGT Bar Association petitioned the Supreme Court for remedy, and after the top court’s intervention the government appointed an acting chairperson, in March 2018. A real replacement arrived that July, in the form of the former Supreme Court judge AK Goel, six months after the last permanent chairperson departed. The tribunal’s work slowed even more drastically in the interim, exacerbating the logjam of cases.

Petitioners, lawyers and activists were relieved to see the post filled, and hoped for some restoration of order. But though the NGT resumed function, its staffing, and its backlog, did not improve after Goel arrived. Today, the NGT has only five judicial members, and two expert members—both forest officers. The only new appointees have been judicial members, all to the principal bench. The NGT Act suggests that the body also include experts on such things as pollution control, environmental-impact assessment and climate-change management, but none of them currently feature. This March, in another hearing on the NGT Bar Association’s petition, the Supreme Court noted, “We find that the vacancy position in respect of both the categories”—judicial and expert members—“is quite staggering. Resultantly, some Benches of the NGT have virtually become dysfunctional, thereby causing severe inconvenience to the litigating public.”

The solicitor general reassured the Supreme Court that the “process of selection of eight Expert Members is already at an advanced stage and the selection process for six Judicial Members has also commenced.” Last year, the lawyer Gitanjali Sreedhar filed a right-to-information application with the environment ministry, asking whether it had formed a committee to select appointees, how many times it had met in the last six months, how many applications it had received and how many interviews it had conducted. The ministry responded that this information “prejudicially affect strategic interest of the state,” and so was confi-



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dential. Sreedhar appealed, but has not received a fresh response.

Regional benches have been allotted specific, limited days for hearing via video. Cases from Bhopal, for example, are heard only on Tuesdays and Thursdays. “This should be a short-term crisis measure, not a long-term solution,” the environmental lawyer Ritwick Dutta told me, yet it has been the practice for well over a year.

Bhagat and his co-petitioners’ case dragged on because of the hobbling of the NGT. Rinchin, a Raigarh-based filmmaker and one of the co-peti-

ABOVE: For years, residents of Raigarh district have resisted the exploitation of the area’s massive coal reserves. Shivpal Bhagat has been part of the resistance, in court and on the ground.

tioners, pointed out that between January and July 2018 there was no Bhopal bench. “*Tareeq pe tareeq*, we waited,” she said, “and finally asked for a transfer petition to Delhi.” The transfer was accepted, but the case was then sent back to Bhopal because the principal bench in Delhi was overloaded. Finally, the NGT delivered its verdict.

But at Kosampali, Coal India was in no rush to see that the recommendations of the joint committee were effected “in a time bound manner.” Mine fires continued to rage despite an explicit recommendation that they be put out, and the boundaries of open-cast mines drew ever closer to locals’ doorsteps, ignoring the recommendation that they be kept at least five hundred metres from any villages. “What good does it do for us?” Rinchin said of the NGT order. “The environmental damage, if it’s still happening, then there’s no point.”

With the Bhopal bench inoperative, Bhagat, Rinchin and residents of six villages in Raigarh approached the Delhi bench asking for orders to enforce the recommendations on the ground. They also asked the bench to order a comprehensive clean-up, examine the carrying capacity of the district—that is, the number of mines and other industrial installations it can safely sustain—and declare a moratorium on mining in the meantime. JSPL later took the matter to the Supreme Court, where it remains. The case will now require the petitioners to travel to Delhi—over a thousand kilometres overland.

While hearing the matter, Goel ordered that petitioners seeking action on unfulfilled recommendations must first approach government authorities, and give them 15 days to respond before appealing to the courts. Activists saw this as a dangerous precedent. For one, it could give authorities and companies lead time to cover up violations. For another, it could put complainants at risk of intimidation and retaliation to forestall a case.

As cases against environmental violators languish, the environment minister, Prakash Javadekar, announced recently that environment clearances will be processed in no more than 80 days, down from an already sped-up

108 days. One ministry expert told me that his colleagues already barely get time to read project reports before they are forced to approve them. The environment ministry has rejected fewer than one percent of project proposals under the Modi administration.

Last month, Bhagat, Rinchin and their co-petitioners finally received an action report on their new case, from the Chhattisgarh Environment Conservation Board. Shweta Narayan, a public-health researcher who helped to empirically establish the contamination of the area’s air, soil and water, found it flawed. “For their study, they’ve taken only air and water samples from two villages, Sarasmal and Kosampali,” she said. “But we had talked about the whole of Tamnar block, which has nine mines and 21 power plants.” Narayan’s report showed, among other things,

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heavy-metal contamination of soil and water—and an alarming frequency of musculoskeletal disorders among local teenagers. The conservation board’s report, even with its limited sample, corroborated heavy-metal contamination, the mismanagement of fly ash and the presence of particulate matter in excess of safe limits—all pointing to coal mining as the root cause of the pollution.

The report’s authors, Narayan said, had “tried to lessen the impact of their own findings—something you don’t expect scientists to do. When scientists put out statements like ‘slightly polluted,’ that’s where one starts using kid gloves to communicate problems of very serious concern. That’s when

you are compromising on your scientific integrity and making it political and biased.” The remedial measures suggested by the conservation board were aimed at only one polluter in the area, Coal India, and again left to the company to implement at its pleasure. Other mine and power-plant operators were let off. When the petitioners complained about the report’s shortcomings, the court agreed that it did not adequately address the concerns they had raised. As of late July, the petitioners were awaiting further hearings.

Coal India sent Bhagat legal notices in August 2018, threatening to sue him and a fellow activist for ₹73 crore of damages that it estimates were caused by strikes that the two had been part of. Bhagat has court dates coming up everywhere from Raigarh to Delhi. He still has faith in the judiciary. “In the beginning, we didn’t even have an idea that we could fight in a court somewhere and get our rights,” he said. “But as soon as we started getting orders from the high courts, from the NGT, we realised that there’s a lot that the law can save. At the district level and the block level, unless there’s a kick from the higher courts, no work happens here. We’ve learned that for any kind of justice to arrive here, whether its for rehabilitation or the environment, it has to come this way.”

New mines continue to come up in Raigarh, threatening the region’s last remaining forests. “The new Adani-operated one has started, Ambuja started, Coal India is starting,” Rinchin said. “You can’t just open up eight or nine mines at one go. You have to think about cumulative impact, especially if you’re taking away the green cover. They have to rethink the whole mining plan and impose a moratorium. In the US, they’d evacuate people with this kind of pollution.” But this is India. “They fought so hard because their lives are precarious,” Rinchin said. “How much are people going to fight?” ■