

BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN
ZONE, CHENNAI

Original Application No : 72 of 2022 (SZ)

IN THE MATTER OF

Meenava Thanthai K.R. Selvaraj Kumar,

.... Applicant(s)

Versus

Union of India,

Ministry of Environment, Forests and

Climate Change (MOEF&CC)

...Respondent(s)

M/s.R.Thirunavukarasu

Counsel for the Respondent
(MOEF &CC)
Mob-9444012986

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M/s.R.Thirunavukarasu

Counsel for the Respondent
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**IN THE NATIONAL GREEN
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ORIGINAL APPLICATION NO. 72 OF 2022 (SZ)

IN THE MATTER OF: -

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VERSUS

Union of India

MOEF&CC

...Respondent

MOST RESPECTFULLY SHOWETH: -

I Dr. C. Palpandi, S/o, Chendurpandi Hindu aged 41 years working as Scientist "D" in Integrated Regional Office of the Ministry of Environment, Forest & Climate Change, at Chennai, the deponent herein does hereby solemnly affirm and state on oath as under: -

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**Dr. C. Palpandi,
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Scientist "D"
Dr. C. Palpandi

1. That I am duly authorized and competent to swear the present counter affidavit on behalf of Ministry of Environment, Forest and Climate Change (MoEF&CC).
2. That the contents of the application, unless specifically admitted herein, are denied to the extent that they are inconsistent with submissions made hereinafter.
3. That, it is respectfully submitted that the instant application has been filed challenging the OM dated 17/01/2022 that provides for criteria/ methodology for rating of SEIAAs based on certain performance indicators.
4. That the OM has been issued by the Ministry to evaluate the performance SEIAA through a star-rating system, based on efficiency and timelines in grant of EC, thereby, encouraging efficiency in disposal of pending matters and at the same time promoting transparency and accountability in the functioning of SEIAA.
5. The Hon'ble Tribunal vide order dated 13/09/2022 observed that the preliminary issue under adjudication is "*Whether an Office*

Memorandum which is issued purely for administrative reasons can be put to challenge before this Tribunal?"

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6. It is humbly submitted that the Central Government, vide section 3 of the Environment Protection Act (EPA), 1986 has the power to take measures to protect and improve the environment and section 3(3) of the EPA, 1986, states that,

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

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7. Further, the Ministry has powers under section 3(3) of the EPA, 1986 to constitute SEIAA for the purpose of exercising and performing such of the powers and functions of the Central Government under EP Act subject to supervision and control of the Central Government. Hence, the Ministry under its supervisory and controlling powers may issue administrative orders to encourage the SEIAA to maintain transparency, efficiency and accountability in the discharge of its functions.

8. It is humbly submitted that a bare perusal of the terms of section 14 of the NGT Act, 2010 would show that the only power conferred therein is to settle disputes arising out of substantial question relating to environment.

There is no power under section 14 or section 15 of the Act to direct the Central Government to carry out administration and to exercise supervision and control in a particular manner. In fact, Hon'ble Supreme Court, in *Techi Tagi Tara vs. Rajendra Singh Bhandari (2017) 11 SCC 734*, specifically observed in the context of section 14, 15 and 2(m) of the NGT Act as follows:

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“19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute – it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.”

It may be noted that no dispute capable of adjudication under section 14 of the NGT Act, 2010 has been raised in the instant matter before the Hon'ble Tribunal, as the matter is purely administrative in nature. A copy of the Order has been annexed as ANNEXURE A/1.

9. It is to submit that SEIAAs have been constituted under the aforesaid provisions of the EP Act by the Ministry for ensuring effective and efficient implementation of EIA Notification, 2006, as amended at the State level and they have been delegated the powers to consider and grant environmental clearance (EC) for all project proposals under Category B as laid down under the aforesaid EIA Notification, 2006, as amended.

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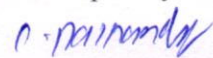
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10. Further, the Projects such as building & construction, small mining activities and other small-scale industries, which serve for local area development by employment generation, have been categorized as category B projects in the EIA Notification 2006. The States have also highlighted that delay in the EC process has caused unnecessary hurdles in the upliftment and development of the underdeveloped areas.
11. That, the EIA Notification, 2006 already provides time-lines for the completion of EC processes and the rating criteria does not seek to change any process or time-line as already provided in the EIA Notification 2006. In fact, the ranking system, constituted under the exercise of its controlling and supervisory powers of the Ministry, is completely based on the provisions of EIA Notification, 2006 and various guidelines issued by Ministry from time to time and is purely an administrative measure for ensuring efficient and effective disposal of matters in a time bound manner without in, anyway, even remotely intervening with the disposal of the matters pending before SEIAA.

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12. It is humbly submitted that there is no negative marking proposed for not meeting the criteria for ranking. In case of deficiency in proposals, SEIAA/ SEAC are fully competent and within their powers to raise EDS (Essential Detail Sought)/ ADS (Additional Detail Sought), as deemed appropriate. The time taken by the Project Proponent (PP) for furnishing reply of EDS/ ADS is not counted towards delay in disposing of matters by SEIAA/SEAC. SEIAA/SEAC has complete freedom to carry out all necessary due diligence before taking decision on project.
13. That, the EIA (Environment Impact Assessment) Reports are prepared as per prescribed ToRs (Terms of Reference) and projects are appraised accordingly. Therefore, there is no question of EIA report quality being compromised due to ranking system, rather it would encourage the PP/ consultants to improve the EIA quality fearing the EDS/ ADS or return of proposals.
14. That, the criteria of time taken for disposal of matters pending before SEIAAs was introduced so that the time-line provided in EIA Notification, 2006 is not breached. Further, in order to ensure that quality



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of disposal is not compromised; marks are not deducted for SEIAAs that happen to take decision in more than 120 days for any particular cas

15. It is humbly submitted that the timelines have been introduced to encourage PPs/consultants to submit complete proposal in a timely manner and reduce undue delay in taking decisions by SEAC/SEIAA so that the timelines prescribed in EIA Notification, 2006, as amended, is not breached.
16. Further, the introduction of complaints redressed by SEIAA has been incorporated as a criterion to increase the accountability of the Government Agency towards the Project Proponents.
17. Furthermore, the EIA Notification, 2006 clearly provides that appraisal of projects which are not required to undergo public consultation shall be based on Form1/ 1A, any other relevant validated information available and the site visit wherever the same is considered necessary by the EAC/ SEAC. In view of the above, this criterion has been added to discourage unnecessary site visits.

D. Palpandi

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18. It is humbly submitted that the impugned OM has been issued strictly as per the provisions of the EIA, Notification, 2006 and that the rating system of SEIAA introduced vide the impugned OM is a dynamic process based on its performance.
19. That the answering respondent has highest regard for law and acts in a prudent manner with regard to the cases pending before this Hon'ble Court.
20. That it is humbly submitted that the Ministry, without prejudice, reserves its rights to file an additional affidavit at a later stage, if so necessary.
21. That in view of the aforementioned facts and circumstances, this Hon'ble Court may kindly be pleased to pass appropriate order(s).

C. Palpandi

DEPONENT

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R. Thirunavukarasu

Counsel for the Respondent

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VERIFICATION

I, Dr. C.Palpandi S/o of Chendurpandi , Hindu aged about 42 years working as Scientist 'D' in in Regional Office of the Ministry of Environment, Forest & Climate Change, at Chennai,the deponent do hereby solemnly affirm and sincerely state that the averments made paras 01to 09 above subject to the best of my knowledge belief and information.

Verified at Chennai on this the 15th day of February 2023

C. Palpandi

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BEFORE THE NATIONAL GREEN
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O.A.No.72 of 2022

Meenava Thantahi K R Selvaraj Kumar

.....Applicant

-vs

The Union of India,

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Reply filed on behalf of the Respondent

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SUPREME COURT CASES

(2018) 11 SCC

(2018) 11 Supreme Court Cases 734

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

TECHI TAGI TARA

.. Appellant;

a

Versus

RAJENDRA SINGH BHANDARI AND OTHERS

.. Respondents.

Civil Appeals No. 1359 of 2017[†] with Nos. 526, 1360, 1561, 2481, 4917, 4936, 5735, 8377-78, 9498, 10471, 10472-73 of 2017, decided on September 22, 2017

b

A. Environment Law — National Green Tribunal Act, 2010 — Ss. 14, 15 and 2(m) — Jurisdiction of NGT — Exercise of — Requisites for — Substantial question relating to environment which must arise in dispute i.e. it should not be academic question — Further held, there must also be claimant raising that dispute which is capable of settlement by NGT by grant of some relief which could be in nature of compensation or restitution of property/environment or any other incidental or ancillary relief connected therewith

c

— Thus held, appointment/nomination of Chairperson/Members of SPCBs cannot be classified as substantial question relating to environment nor can their appointment be termed as dispute since dispute would be assertion of right/interest/claim met by contrary claims on other side — Appointments/Nominations of Chairperson/Members are not “disputes” as such for purposes of the Act — They could be disputes for constitutional court to resolve through writ of quo warranto but certainly not for NGT to venture into — Besides, no relief as postulated under S. 15 can be granted to claimant, assuming that substantial question relating to environment does arise and dispute exist — Impugned judgment directing State Government to reconsider appointments of persons appointed to SPCBs since they lacked necessary expertise or qualifications to be Chairperson/Members of such high-powered and specialised statutory bodies unsustainable and liable to be set aside — It would have been more appropriate for NGT to relegate claimant to constitutional court for relief prayed — Words and Phrases — “Dispute” — Meaning (Paras 1, 17 to 23)

d

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f

Prabhakar v. Deptt. of Sericulture, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149, *relied on Rajendra Singh Bhandari v. State of Uttarakhand*, 2016 SCC OnLine NGT 456, *reversed Black’s Law Dictionary*, 5th Edn., p. 424, *cited*

g

[†] Arising from the impugned final Order in *Rajendra Singh Bhandari v. State of Uttarakhand*, 2016 SCC OnLine NGT 456 (National Green Tribunal, Principal Bench, New Delhi, Original Application No. 318 of 2013, dt. 24-8-2016)

h

B. Environment Law — National Green Tribunal Act, 2010 — Ss. 14, 15 and 2(m) — Jurisdiction of NGT — Scope — Issue of guidelines by NGT for appointment of Chairperson and Members of SPCBs — Unsustainability

a

— Held, it is beyond jurisdiction of NGT and even Supreme Court to lay down specific rules and guidelines for recruitment of Chairperson and Members of SPCBs — However, considering principles of sustainable development, public trust and intergenerational equity, there should be considerable deliberation before appointment is made — Further held, State Government does not have unlimited discretion or power to appoint anyone of its choice and besides express restrictions in statute or Constitution, there could be implied restrictions and authority cannot in breach of such implied restrictions, exercise its discretionary power — State Government directed to frame appropriate rules for appointment of such persons who would add lustre and value to SPCB (Paras 24 and 25)

b

c

State of Punjab v. Salil Sabhlok, (2013) 5 SCC 1 : (2013) 2 SCC (L&S) 1; *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88; *Ram Ashray Yadav, In re*, (2000) 4 SCC 309 : 2000 SCC (L&S) 670, *relied on*

C. Environment Law — Regulatory Framework, Bodies and Judicial Intervention — Central Groundwater Board — Appointment/Nomination to SPCBs — Necessity of making appointments with due application of mind considering their duties, functions and responsibilities, emphasised — Lackadaisical and casual approach of State Government — Strongly deprecated

d

e

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g

— Held, one of the principal attributes of good governance is establishment of viable institutions comprising professionally competent persons and strengthening of such institutions so that duties and responsibilities conferred on them are performed with dedication and sincerity in public interest — Further held, this is applicable not only to administrative bodies but statutory authorities as well, and more so, since statutory authorities are creation of law made by competent legislature, representing will of people — State Government directed to frame appropriate guidelines or recruitment rules within stipulated time considering institutional requirements of SPCBs, law laid down by statute/Court, reports of experts committees to ensure appointment of suitable professionals and experts — Liberty granted to public-spirited individuals to move appropriate High Court for issuance of writ of quo warranto if any person who does not meet statutory or constitutional requirements is appointed or continuing as such — Constitution of India — Arts. 48-A, 51-A(g) and 21 — Water (Prevention and Control of Pollution) Act, 1974 — S. 4(2) — Air (Prevention and Control of Pollution) Act, 1981, S. 5(2) (Paras 2, 3, 4 and 35)

h

Binay Kumar Sinha v. State of Jharkhand, 2002 SCC OnLine Jhar 111 : (2002) 3 BLJR 2223, *considered*

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SUPREME COURT CASES

(2018) 11 SCC

Research Foundation for Science v. Union of India, (2005) 10 SCC 510; *State of U.P. v. Jeet S. Bisht*, (2007) 6 SCC 586, referred to

Research Foundation for Science v. Union of India, (2005) 10 SCC 510, cited

D. Constitution of India — Arts. 48-A, 51-A(g) and 21 — Natural law as well as constitutional obligation to protect and preserve environment — Fundamental duty to protect and improve natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures, emphasised (Para 3)

E. Environment Law — Regulatory Framework, Bodies and Judicial Intervention — Generally — Judicial Intervention — Non-compliance by State in setting up and implementation of proper regulatory mechanism in the State as per statutory framework

— Fact that (i) No rules were framed by State of Uttarakhand under the Water Act and the Air Act even though the State was formed several years ago; (ii) It had adopted rules framed by State of U.P. notified in 1984 without even considering possibility of somewhat different conditions prevailing in the State; (iii) Convening only 15 meetings of SPCBs over a period of 12 yrs when it was supposed to convene meeting once every three months, and (iv) Despite direction by Supreme Court to frame rules laying down essential qualifications and experience for appointment of Members/Chairperson of SPCB failing to frame rules noted and nonchalance exhibited, strongly deprecated

— Constitution of India, Arts. 48-A, 51-A(g) and 21 (Paras 12 and 13)

Uttaranchal EP & PC Board v. C.V.S. Negi, SLP (C) No. 6023 of 2006, order dated 8-1-2008 (SC), referred to

P-D/59426/S

Advocates who appeared in this case :

P.S. Narasimha, Additional Solicitor General, A. Mariarputham, Advocate General, Ranji Thomas, Subramonium Prasad and Jaideep Gupta, Senior Advocates [V.N. Raghupathy, Nishant Ramakantrao, Katneshwarkar, Ms Deepa Kulkarni, Amit Agarwal, Sanjay Kr. Visen, M.R. Shamshad, Tushar Mehta, Dhruv Pali, Himanshu Pal, Ms Aruna Mathur, Avneesh Arputham, Ms Anuradha Arputham, Amit Arora, Ms Simran Jeet (for M/s Arputham Aruna and Co.), Guntur Prabhakar, Ms Prerna Singh, Ms Rachana Srivastava, Ms Monika, Sukrit R. Kapoor, S.S. Shamsbery, Amit Sharma, Ankit Raj, Vaibhav Prakash, Ms Ruchi Kohli, R. Rakesh Sharma, K.V. Vijayakumar, Abhishek, P.S. Narasimha, P. Venkat Reddy, Prashant Kr. Tyagi (for M/s Venkat Palwai Law Associates), Sapam Biswajit Meitei, Naresh Kr. Gaur and Ashok Kr. Singh, Advocates] for the Appellant;

A.N.S. Nadkarni, Additional Solicitor General, D.K. Singh, Additional Advocate General (Vivek Gupta, Mukesh Verma, Pawan Kr. Shukla, Yash Pal Dhingra, M. Shoeb Alam, Ms Fauzi Shakil, Ujjwal Singh, Mojahid Karim Khan, Atul Jha, Sandeep Jha, Dharmendra Kr. Sinha, Ms Ruchira Gupta, Shishir Deshpande, Ms Mona Singh, Arjun Garg, Ranjan Mukherjee, P.V. Yogeswaran, M.K. Enatoli Sema, Edward Belho, Amit Kr. Singh, K. Luikang Michael, Z.H. Isaac Haiding, Som Raj Choudhary, Raja Chatterjee, Chanchal Kr. Ganguli, Piyush Sachdev, Ms Runa Bhuyan, Shubham Bhalla, Ritesh Khatri, Gaurang Kanth, Chandan Kumar, Ms Eshita Baruah, K.V. Jagdishvaran, Ms G. Indira, V.G. Pragasam, S. Prabu Ramasubramanian, Manu Sundaram, Ms Hemantika Wahi, Ms Jasal Wahi, Ms Mamta Singh, Ms Shodhika Sharma, Ms Puja Singh, D.K. Singh, Anuvrat Sharma, Komal Mundhra and Saurabh Agrawal, Advocates) for the Respondents.

TECHI TAGI TARA v. RAJENDRA SINGH BHANDARI (*Lokur, J.*) 737

Chronological list of cases cited on page(s)

1. 2016 SCC OnLine NGT 456, *Rajendra Singh Bhandari v. State of Uttarakhand (reversed)* 737d
- a 2. (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149, *Prabhakar v. Deptt. of Sericulture* 749f
3. (2013) 5 SCC 1 : (2013) 2 SCC (L&S) 1, *State of Punjab v. Salil Sabhlok* 751d, 751e
4. SLP (C) No. 6023 of 2006, order dated 8-1-2008 (SC), *Uttaranchal EP & PC Board v. C.V.S. Negi* 747a
5. (2007) 6 SCC 586, *State of U.P. v. Jeet S. Bisht* 754g
- b 6. (2005) 10 SCC 510, *Research Foundation for Science v. Union of India* 743d-e, 744e-f, 744g, 745e-f, 753b
7. 2002 SCC OnLine Jhar 111 : (2002) 3 BLJR 2223, *Binay Kumar Sinha v. State of Jharkhand* 741d-e
8. (2000) 4 SCC 309 : 2000 SCC (L&S) 670, *Ram Ashray Yadav, In re* 752c
9. (1985) 4 SCC 417 : 1986 SCC (L&S) 88, *Ashok Kumar Yadav v. State of Haryana* 752b

c The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— This batch of appeals is directed against the judgment and order dated 24-8-2016 passed by the National Green Tribunal, Principal Bench, New Delhi (for short “the NGT”) in *Rajendra Singh Bhandari v. State of Uttarakhand*¹. On a reading of the judgment and order passed by the d NGT, it is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State Pollution Control Boards (for short “SPCBs”) did not have, according to the NGT, the necessary expertise or qualifications to be members or Chairpersons of such high-powered and specialised statutory bodies and therefore did not deserve their appointment or nomination. While e we fully commiserate with the NGT and share the pain and anguish, we are of the view that the Tribunal has, at law, exceeded its jurisdiction in directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs, however well-meaning they might be. f Therefore, we set aside the decision of the NGT, but note that a large number of disconcerting facts have been brought out in the judgment which need serious consideration by those in authority, particularly the State Governments that make appointments or nominations to the SPCBs. Such appointments should not be made casually or without due application of mind considering the duties, functions and responsibilities of the SPCBs.

g 2. Why is it important to be more than careful in making such appointments? There can be no doubt that the protection and preservation of the environment is extremely vital for all of us and unless this responsibility is taken very seriously, particularly by the State Governments and the SPCBs, we are inviting trouble that will have adverse consequences for future generations. Issues of sustainable development, public trust and intergenerational equity are not mere catchwords, but are concepts of great importance in environmental jurisprudence. Perhaps appreciating and anticipating this, Article 48-A was introduced in the Constitution and this Article reads as follows:

h

1 2016 SCC OnLine NGT 456



“48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

a

3. Similarly, Article 51-A(g) of the Constitution indicates the fundamental duties of every citizen of the country, one of them being to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.² It is quite clear that apart from the natural law obligation to protect and preserve the environment, there is also a constitutional obligation to do so. Unfortunately, despite this, our society has been witness over the last few decades, to repeated onslaughts against the environment, sometimes in the name of development and sometimes because our society just does not seem to care. In this context we may also mention Article 21 of the Constitution which has been given a very wide amplitude by several decisions of this Court, including on issues concerning the environment. The judgment of the NGT draws attention to some of these aspects but essentially points to the “who-cares” attitude adopted by several State Governments. It is this attitude that compelled a public-spirited environmentally conscious individual to challenge the composition of the SPCB in the State of Uttarakhand and consequently the necessity of being extra careful in making appointments to the SPCB.

b

c

d

4. One of the principal attributes of good governance is the establishment of viable institutions comprising professionally competent persons and the strengthening of such institutions so that the duties and responsibilities conferred on them are performed with dedication and sincerity in public interest. This is applicable not only to administrative bodies but more so to statutory authorities — more so, because statutory authorities are the creation of a law made by a competent legislature, representing the will of the people.

e

5. State Pollution Control Boards (or SPCBs) constituted under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981³ fall in this category but many of them possess only a few or sometimes none of the above attributes of good governance and again a few or none of them are adequately empowered. This is a serious problem haunting the SPCBs for at least two decades (if not more).

f

g

2 **“51-A. Fundamental duties.**—It shall be the duty of every citizen of India—

(a) to (f) * * *

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;

(h) to (k) * * *

h

3 Henceforth “the Water Act” and “the Air Act”.

TECHI TAGI TARA v. RAJENDRA SINGH BHANDARI (*Lokur, J.*) 739

6. The composition of the SPCB is provided for in Section 4(2) of the Water Act and this reads as follows [Section 5(2) of the Air Act is similar]:

- a “4. (2) A State Board shall consist of the following members, namely—
- (a) a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government;
- b Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;
- (b) such number of officials, not exceeding five, to be nominated by the State Government to represent that Government;
- (c) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;
- c (d) such number of non-officials, not exceeding three, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;
- (e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;
- d (f) a full-time Member-Secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.”

- e 7. One of the earliest communications on our record encouraging professionalism in the SPCBs with a view to empowering them is a letter of 26-9-1997 addressed by the Secretary in the Ministry of Environment and Forest (MoEF) of the Government of India to the Chief Secretary of every State highlighting the importance of the SPCBs, the fact that their activities are science and technology based and the necessity of taking relevant factors into consideration while making appointments to the SPCBs. The letter reads
- f as follows:

“Secretary
Ministry of Environment and Forests
Government of India

26-9-1997

- g D.O. No. PS/Secy (E&F)/CPCB/97
Dear
- The State Pollution Control Boards/Pollution Control Committees in Union Territories have been assigned an important role for prevention and control of pollution from different sources. In recent years, additional responsibilities have been assigned to them for enforcement of various statutes.
- h Hence, these organisations need to be suitably strengthened so that they can cope up with the tasks. In fact, the Hon’ble Supreme Court has also had

occasion to observe on the unsatisfactory performance of State Boards in discharging their functions.

The activities of the Pollution Control Boards/Pollution Control Committees are essentially science and technology based. The Chairman and Member-Secretaries are the key functionaries of the Boards/Committees who are expected to have requisite professional knowledge and experience for providing effective leadership to their organisations. Under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 the specific requirements for appointment to these posts have been laid down.

However, in some State Boards/Committees, the appointments to these posts are made without due consideration to such requirements as envisaged under the Acts. Also, another major problem being faced by these organisations is on account of frequent changes of Chairmen and Member-Secretaries. I request you to kindly ensure that appropriate persons are appointed for these key positions and they are not frequently changed. Where the incumbents do not have the prescribed criteria they should be replaced.

It is requested that this issue may kindly receive your personal attention on a top priority basis.

With regards

Yours sincerely,
sd/-

(Vishwanath Anand)"

8. More importantly and perhaps keeping the diverse nature of activities of the SPCBs in mind, a conference was held in Coimbatore on 29-1-2001 and 30-1-2001 of the Ministers of Environment and Forests of the State Governments. The conference recommended, inter alia, the induction of academicians, professionals, experts and technologists for the effective functioning of the SPCBs. As a follow-up to the recommendations, a letter was addressed by the Secretary in the MoEF to the Chief Secretary of every State on 3-7-2001. This letter reads as follows:

"P.V. Jayakrishnan
Secretary
D.O. No. PS/Secy (E&F)/CPCB/2001

3-7-2001

Dear

In the National Conference of Ministries of Environment and Forests held at Coimbatore on 29-1-2001, 30-1-2001, several important recommendations were made regarding effective functioning of the State Pollution Control Boards/Committees.

These include the following:

- (i) Induction of academicians, legal professionals, health experts and technologists as members of the Boards/Committees.
- (ii) Appointment of multi-disciplinary staff.

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(iii) Ban on recruitment shall be relaxed for the posts of scientists and engineers in the Pollution Control Boards/Committees.

a (iv) Training of personnel, for which programme shall be drawn up by the Central Pollution Control Board.

(v) Streamlining of consent/authorisation procedures.

(vi) Inventorisation of polluting sources and pollution load.

(vii) Formulation of annual action plans.

b (viii) Publication of annual State Environment Report.

(ix) Strengthening and upgrading of water and air quality monitoring and laboratory facilities.

We had taken up the matter with the respective State Pollution Control Boards/Committees. Since most of the action points require intervention of the State Governments, I request you kindly to take necessary action for implementation of the recommendations.

c I look forward to your response at the earliest.

With regards.

Yours sincerely,

sd/-

(P.V. Jayakrishnan)

d To Chief Secretaries of all States/UTs”

e 9. These communications seem to have had little or no impact at least in one instance as is evident from a reading of a decision of the Jharkhand High Court dated 15-5-2002 in *Binay Kumar Sinha v. State of Jharkhand*⁴ concerning the Chairperson of the SPCB of that State. The High Court was compelled to make the following scathing and unfortunate observations: (SCC OnLine Jhar paras 3-4)

“3. On 4-4-2002, when the Chairman appeared before us and we started talking to him in order to elicit his views and opinion on the aforesaid questions, what we found has been aptly and clearly recorded in our order of that day. The extracts read thus:

f ‘Shri Thakur Bal Mukund Nath Shahdeo, Chairman, State Pollution Control Board has appeared before us today in person. During the course of our conversation with him, we found (to our total horror, surprise, dismay and amazement) that he does not know anything at all about any aspect relating to pollution, or the control of pollution. In course of our extensive conversation with him, we found that the only academic qualification that he boasts of is “matriculation”.

g He has no other academic or technical qualification whatsoever. When, by referring to Section 5(2)(a) of the Air (Prevention and Control of Pollution) Act, 1981, we asked him whether he has any special knowledge or any practical experience in respect of any matter relating to the environmental pollution, his answer was in the negative. We must record that during the course of our conversation with Shri Shahdeo, we

h were constantly helped and assisted by Mr Poddar, learned Additional



Advocate General. We actually impressed upon Mr Poddar the need of assisting Shri Shahdeo in answering our questions. Mr Poddar very kindly lent his helping hand to us. What emerged was that Mr Shahdeo has neither any general or special knowledge, nor any academic qualification, nor any experience whatsoever that may have anything to do with any matter or any aspect relating to the pollution, air pollution, water pollution, noise pollution, or any other pollution of any kind. What to speak of his—having special knowledge or practical experience, he has neither any knowledge, general or special, nor any experience, practical or otherwise with respect to any matters relating to environmental pollution. We repeatedly asked him to inform us about one single such fact by which he could lay his claim to hold this office. He failed to inform us of even a single fact which could qualify him to hold this office. His only claim was that he is a politico-social worker. We asked him also as to how he came to be appointed on this post. He says that he made an application to Mrs Neelam Nath, Secretary, Forests, we asked him whether such an application was invited from him. He says that the application was invited from him. We asked him whether invitation was extended to him personally by Mrs Neelam Nath or did it appear in any advertisement. He says that he, on his own, gave such an application and that it was neither invited personally from him nor through any advertisement. Prima facie, it appears to us that a person who does not have the requisite qualification, experience, or knowledge has been appointed on the post of Chairman, Pollution Control Board. Before we proceed any further, we would like Mr Poddar, learned AAG to produce before us the original records of the Government relating to the appointment of Mr Shahdeo.

4. It was from this point onwards that a case arose within a case. Both the issues started being dealt with simultaneously by us, namely, the issue relating to Sundera Mineral & Chemical Industry and the propriety, legality and validity of the appointment of Mr Shahdeo.”

A little later in the judgment it was held: (SCC OnLine Jhar para 42)

“42. Looked at from the aforesaid legal perspective and in view of our clear findings that Shri Shahdeo did not possess the qualifications required of the Chairman, State Pollution Control Board, we have no hesitation, but to hold that it would be a violation of the law to allow him to continue as the Chairman of the State Board. We accordingly order and declare that the appointment of Shri Shahdeo as Chairman, State Board, was not legal and valid and hence improperly made and therefore, on these grounds we order and direct that he cannot continue to function as such. By issuance of a writ of quo warranto, therefore, the appointment of Shri Shahdeo as Chairman, State Board, is quashed and set aside. Shri Shahdeo shall forthwith and with immediate effect cease to hold the office of Chairman, State Board. The post of Chairman, State Board is hereby declared to be vacant, and with immediate effect.”

10. Notwithstanding the above decision, communications and orders, the State Governments continued to display disinterest in the matter of professional

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appointments to the SPCBs. This led to another communication from the MoEF on 16-8-2005 (which still did not have the desired effect) and this communication reads as follows:

a

“Supreme Court Matter
Most Immediate
By Speed Post

No. 23-8/2004-HSMD (Vol.II)

b

Government of India
Ministry of Environment and Forests
(Supreme Court Monitoring Committee)

Room No. 927, Paryavaran Bhawan
C.G.O. Complex, Lodhi Road
New Delhi 110003 108

c

Dated 16-8-2005

To,
The Chief Secretaries of all States/UTs
(As per the list enclosed)

d

Sub: *Constitution of the State Pollution Control Board/Pollution Control Committees (SPCBs/PCCs) — regarding*

Dear Sir,

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The Supreme Court by its order dated 14-10-2003 in Writ Petition (Civil) No. 657 of 1995 set up a Monitoring Committee to ensure time-bound implementation of various directions given in the said order.⁵ The Committee has been visiting several States to monitor the status of implementation of these directions.

During its interaction with various Pollution Control officials, the Supreme Court Monitoring Committee (SCMC) has noticed that the State Pollution Control Boards (SPCBs), Pollution Control Committees (PCCs) of UTs were not constituted in accordance with the provisions given in the Water Act, 1994 and the Air Act, 1981.

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Chairperson of the Board:

3. The statutory provisions require that Chairpersons appointed shall be persons having “special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matter aforesaid”.

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4. The SCMC has found that in the several cases, the Chief Secretaries, Environment Secretaries, politicians, MLAs, literary persons and non-technical persons have been appointed as Chairperson of SPCBs/PCCs.

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5. The M.G.K. Menon Committee had recommended in its report that “The Chairman of the Pollution Control Boards and Committees should be individuals with a sense of vision and a feeling for the future. They must have an understanding of the complexity of modern science and technology

⁵ *Research Foundation for Science v. Union of India*, (2005) 10 SCC 510



since they will be dealing with highly technical issue. They must have an understanding of law. The Chairperson would have to be fully involved in the task of environment construction and planning. Appointment of the Chairperson of the Board should be on full-time basis. a

Member-Secretary of the Board:

6. Similarly, in respect of the post of Member-Secretary the statutory provisions (Water Act) require that he be full-time, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control. b

7. In relation to appointment of Member-Secretaries, the Menon Committee has recommended that: "The incumbent should possess a postgraduate degree in science, engineering or technology, and have adequate experience of working in the area of environment protection".

8. The SCMC has found that in several States, persons from IFS or from the PWD especially from the PHE departments, are either being appointed or deputed to the post of Member-Secretary without the necessary statutory qualifications. c

Members:

9. No effort is being made to appoint persons with adequate scientific, technical or legal background or from the environmental field as members of the Board. Board members are increasingly being appointed for political purposes. This is leading to ineffective and inefficient functioning of SPCBs/PCCs. d

10. Though the Boards are to function as statutory bodies under the Air Act, 1981, no specialists in air pollution (as required by the Air Act, 1981) are being appointed as members. This is a serious lacuna in constitution of the Boards. e

11. During its visits to various States to monitor implementation of the order dated 14-10-2003⁵, the SCMC has observed that the order of the Supreme Court being efficiently carried out in States that have competent Chairperson or Member-Secretaries. In other States, due to lack of proper attention at the highest level, implementation is found to be tardy and without much progress. f

12. The SCMC discussed these issues at its meeting held on 28-3-2005 and came to the firm conclusion that only technically qualified professionals should be appointed to the critical positions of Chairperson, Member-Secretary and Members of the Pollution Control Boards so that their functioning can be strengthened as required in terms of para 41.1 of the Supreme Court's order dated 14-10-2003⁵. g

13. The Committee is also of the view that recommendations of the M.G.K. Menon Committee be fully respected and the Chairperson should be appointed on full-time basis. Without the officers it is not possible for any Board to function effectively in view of the numerous laws and statutes that demand efficient and effective actions from State Pollution Control Boards. h

⁵ *Research Foundation for Science v. Union of India*, (2005) 10 SCC 510

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14. We draw your kind attention to several reports on strengthening of State Pollution Control Boards. These include:

- a
- (1) The Bhattacharya Committee, 1984
 - (2) The Belliappa Committee, 1990
 - (3) The ASCI Study, 1994
 - (4) Study of the Sub-Group, 1994

b

15. All these studies were considered during the Evaluation Study on "Function of the Pollution Control Board" prepared by the Programme Evaluation Organisation of the Planning Commission.

16. The Planning Commission report concluded: "Considering the interesting technicalities involved in the functions to be performed by these Boards, it is essential that technical persons possessing scientific knowledge about matters relating to pollution and pollution control hold the upper hand".

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17. The Conference of Ministers of Environment that took place in Coimbatore also reiterated at the highest political level, the decision that the SPCBs should be headed and staffed by technically competent professionals (and not by journalists or politicians or administrative officers).

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18. The composition of the Boards is therefore under the scrutiny of the SCMC and no further appointment of Chairpersons or Member-Secretaries should be carried out which do not meet the norms given in the statute and elucidated by the Menon Committee.

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19. In view of the above, you are requested to inform this Monitoring Committee regarding the qualifications of the Chairperson, Member-Secretary and Members of the Pollution Control Board, Pollution Control Committee in your State/Union Territory. Based on the information, the Committee will examine whether the persons nominated to these positions meet the statutory norms and the requirements as indicated in the M.G.K. Menon Committee Report and the order of the Supreme Court dated 14-10-2003⁵ and further necessary action will be taken in the matter.

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20. This matter may kindly be given the highest consideration and a reply in this regard may be provided to the undersigned within 4 weeks so that the same will be considered in the next SCMC meeting. It will be highly appreciated, if a copy of the information may also be sent through email.

Yours faithfully

sd/-

(Dr G. Thyagarajan)

Chairman,

Supreme Court Monitoring Committee

Telefax: 011-24361410

Email: drgarajan @yahoo.co.in"

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⁵ *Research Foundation for Science v. Union of India*, (2005) 10 SCC 510



11. There are a few other communications on the same subject but it is not necessary to detail their contents. All that need be said is that the Central Government, time and again, requested the State Governments to appoint persons who could add value and stature to the SPCBs by their very presence and then utilise their expertise in preserving and protecting the environment, including air and water.

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12. As far as the State of Uttarakhand is concerned, it has come on record that no rules (let alone recruitment rules) have been framed by the State under the Water Act and the Air Act even though the State was formed several years ago. Rules framed by the State of Uttar Pradesh notified in 1984 have been adopted by Uttarakhand but there has apparently been no fresh application of mind to these Rules or even consideration of the possibly somewhat different conditions in Uttarakhand. There seems to be a mechanical and bodily lifting of the Uttar Pradesh Rules. Apart from the above, it has also come on record that meetings of the SPCB are required to be held once in three months but as far as the State of Uttarakhand is concerned, only 15 meetings were held during the period from 2001 (when the Board was constituted) over the next 12 years. There is therefore nonchalance shown by Uttarakhand to the rule-making power and the provisions of Section 8 of the Water Act and Section 10 of the Air Act⁶ relating to holding meetings of the SPCB.

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13. To make matter worse, despite this Court passing an order on 8-1-2008 [in IA No. 4 of 2007 in SLP (Civil) No. 6023 of 2006] directing the State of Uttarakhand and the SPCB to consider the desirability of making rules laying down essential qualifications and experience and other relevant factors for

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6 Section 8 of the Water Act:

“8. *Meetings of Board.*—A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

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Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.”

Section 10 of the Air Act:

“10. *Meetings of Board.*—(1) For the purposes of this Act, a Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

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Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

(2) Copies of the minutes of the meetings under sub-section (1) shall be forwarded to the Central Board and to the State Government concerned.”

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a appointment of members in the SPCB⁷, we are told that unfortunately, such rules have not been made and the impugned order under appeal indicates that the matter has remained under consideration of the State Government since 2006.

b 14. Keeping all these facts and the recalcitrance of the State Governments in mind, the NGT examined the expertise and qualifications of members of the SPCB of almost all States and prima facie found that about ten States and one Union Territory had members in the SPCB who lacked the qualifications suggested by the Central Government.

c 15. At this stage, it must be mentioned that apart from the Central Government, there are several authorities that have applied their mind to the issue of appointment of members of the SPCBs. These include Expert Committees such as the Bhattacharya Committee of 1984, the Belliappa Committee of 1990, the Administrative Staff College of India Study of 1994 and a committee chaired by Prof. M.G.K. Menon. Notwithstanding this, the response of the State Governments in appointing professionals and experts to the SPCBs has been remarkably casual. It is this *chalta hai* attitude that led the NGT to direct the State Governments to consider examining the appointment of the Chairperson and members in the SPCBs and determining whether their appointment deserves continuation or cancellation. Thereafter the NGT gave several guidelines that ought to be followed in making appointments to the SPCBs.

e 16. The objection of the appellants is to: (i) the exercise of jurisdiction by the NGT in directing the State Governments to reconsider the appointment of the Chairperson and members of the SPCBs; and (ii) laying down guidelines for appointment of the Chairperson and members of the SPCBs.

f 17. As regard the first grievance, it is contended that the appointment or removal of members of the SPCBs does not lie within the statutory jurisdiction of the NGT. Our attention has been drawn to some provisions of the National

7 *Uttaranchal EP & PC Board v. C.V.S. Negi*, SLP (C) No. 6023 of 2006, order dated 8-1-2008 (SC), wherein it was directed:

g “IA No. 4 of 2007 be treated as an original petition to be listed along with SLP (C) No. 6023 of 2006. The learned counsel for the State of Uttaranchal and Uttarakhand Environment Protection and Pollution Control Board shall find out the desirability of having rules governing the essential qualifications and experience and such relevant factors for the appointment of various officials in the Board. They shall also indicate their stand as regards certain NOCs stated to have been issued to pharmaceutical manufacturers. Call after eight weeks.”

h IA No. 4 of 2007 was converted to WP (Civil) No. 85 of 2008 which was listed along with SLP (Civil) No. 6023 of 2006.

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Green Tribunal Act, 2010 (for short "the Act"). The jurisdiction of the NGT is circumscribed by Section 14 of the Act which reads as follows:

"14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

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(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

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(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

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This provision cannot be read in isolation but must be read in conjunction with Section 15 of the Act which relates to relief, compensation and restitution as being broadly the directions that can be issued by the NGT. Section 15 of the Act reads as follows:

"15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide—

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(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

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(c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

f

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

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(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief

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to the claimants and for restitution of the damaged property or environment, as it may think fit.

a (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

18. Finally, it is important to refer to Section 2(m) of the Act which reads:

b “2. (m) “substantial question relating to environment” shall include an instance where—

(i) there is a direct violation of a specific statutory environmental obligation by a person by which—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

c (B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;”

d 19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

e 20. The appointment of the Chairperson and members of the SPCBs cannot be classified in any circumstance as a substantial question relating to the environment. At best it could be a substantial question relating to their appointment. Moreover, their appointment is not a dispute as one would normally understand it. In *Prabhakar v. Deptt. of Sericulture*⁸ the following definition of “dispute” was noted in paras 34 and 35 of the Report: (SCC p. 21)

f “34. To understand the meaning of the word “dispute”, it would be appropriate to start with the grammatical or dictionary meaning of the term:

g ‘ “Dispute”.—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;’

35. *Black’s Law Dictionary*, 5th Edn., p. 424 defines “dispute” as under:

h ‘Dispute.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary



claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.’ ”

21. As far as we are concerned, in the context of the Act, a dispute would be the assertion of a right or an interest or a claim met by contrary claims on the other side. In other words, the dispute must be one of substance and not of form and it appears to us that the appointments that we are concerned with are not “disputes” as such or even disputes for the purposes of the Act — they could be disputes for a constitutional court to resolve through a writ of quo warranto, but certainly not for the NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which the NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like the NGT. While we appreciate the anxiety of the NGT to preserve and protect the environment as a part of its statutory functions, we cannot extend these concepts to the extent of enabling the NGT to consider who should be appointed as a Chairperson or a member of any SPCB or who should not be so appointed.

22. Additionally, no relief as postulated by Section 15 of the Act could be granted to a claimant, assuming that a substantial question relating to the environment does arise and that a dispute does exist.

23. It appears to us that the NGT realised its limitations in this regard and therefore issued a direction to the State Governments to reconsider the appointments already been made, but the seminal issue is really whether the NGT could at all have entertained a claim of the nature that was raised. For reasons given above, the answer must be in the negative and it would have been more appropriate for the NGT to have required the claimant to approach a constitutional court for the relief prayed for in the original application. To this extent therefore, the direction given by the NGT must be set aside as being without jurisdiction. However, we have been told that some States have implemented the order of the NGT and removed some members while others have approached this Court and obtained an interim stay order. Those officials who were removed pursuant to the order of the NGT (including the appellant Techi Tagi Tara) have an independent cause of action and we leave it open to them to challenge their removal in appropriate and independent proceedings. This is an issue between the removed official and the State Government — the removal is not a public interest issue and we cannot reverse the situation.

24. On the second grievance relating to the issue of guidelines by the NGT, the meat of the matter concerns the appointment of officials who are experts in their field and are otherwise professional. This is for each State Government to consider and decide what is the right thing to do under the circumstances — Should an unqualified or inexperienced person be appointed or should the

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a SPCB be a representative but expert body? The Water Act and the Air Act as well as the Constitution give ample guidance in this regard. We have already
 b adverted to the provisions of the Constitution including Article 48-A, Article 51-A(g) and Article 21 of the Constitution. So, the entire scheme of the various provisions of the Constitution adverted to above, including the principles that have been accepted and adopted internationally as well as by this Court such as the principles of sustainable development, public trust and intergenerational equity are a clear indication that in matters relating to the protection and
 c preservation of the environment (through the appointment of officials to the SPCBs) the Central Government as well as the State Governments have to walk the extra mile. Unfortunately, many of the State Governments have not even taken the first step in that direction — hence the present problem.

d 25. While it is beyond the jurisdiction of the NGT and also beyond our jurisdiction to lay down specific rules and guidelines for recruitment of the
 e Chairperson and members of the SPCBs, we are of opinion that there should be considerable deliberation before an appointment is made and only the best should be appointed to the SPCB. It is necessary in this regard for the Executive to consider and frame appropriate rules for the appointment of such persons who would add lustre and value to the SPCB. In this connection we refer to *State of Punjab v. Salil Sabhlok*⁹ in which it was observed with reference
 f to appointments to the Public Service Commission that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute or the Constitution and the statutory or constitutional authority cannot, in breach of such implied restrictions, exercise its discretionary power. In our opinion this would be equally applicable to an appointment to a statutory body such as the SPCB — the State Government does not have unlimited discretion
 g or power to appoint anybody that it chooses to do.

h 26. It was also held in *Salil Sabhlok*⁹ that the deliberative process and institutional requirements are of considerable importance in respect of any appointment that is made. In this context, the imperative of good governance was highlighted and with regard to framing rules or issuing guidelines, it was held as follows: (SCC p. 63, para 136)

“136. In the light of the various decisions of this Court adverted to above, the administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairperson and Members of the Punjab Public Service Commission. That it has failed to do so does not preclude this Court or any superior court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or Member of the Punjab Public Service Commission, does not imply that this Court cannot direct the executive to frame guidelines and set the parameters. This Court can certainly issue appropriate directions in

this regard, and in the light of the experience gained over the last several decades coupled with the views expressed by the Law Commission, the Second Administrative Reform Commission and the views expressed by this Court from time to time, it is imperative for good governance and better administration to issue directions to the executive to frame appropriate guidelines and parameters based on the indicators mentioned by this Court. These guidelines can and should be binding on the State of Punjab till the State Legislature exercises its power.”

27. In *Ashok Kumar Yadav v. State of Haryana*¹⁰ this Court observed that (at SCC p. 456, para 30) competent, honest, independent persons of outstanding ability and high reputation who command the confidence of people and who would not allow themselves to be deflected by any extraneous consideration from discharging their duties should be appointed to the Public Service Commissions. Similarly, in *Ram Ashray Yadav, In re*¹¹ it was held that (at SCC p. 321, para 34) the credibility of an institution is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the officials act subjectively and not objectively or that their actions are suspect. In our opinion, these conclusions of this Court would equally apply to professional and expert statutory bodies such as the Central Pollution Control Board and the State Pollution Control Boards.

28. Additionally, various committees have given sufficient guidelines for the appointment of the Chairperson and members of the SPCBs. The *Bhattacharya Committee* (1984) proposed that the structural organisation of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development. The Committee, inter alia, called for (a) discouraging the flow of deputationists to the Boards, (b) upgrading regional laboratories, (c) providing each Board with at least one mobile laboratory, (d) creating a Centralised training institute, (e) providing, on priority, funds to establish air control activity, and (f) bestowing the power to make posts at least up to the rank of environmental engineers/scientists with the Boards.¹²

29. Similarly, the *Belliappa Committee* (1990) recommended (a) introducing elaborate monitoring, reporting and organisational systems at the national level along with four regional centres and one training cell in each Board, (b) effecting suitable changes in the Board’s recruitment policy to enable them induct persons with suitable academic qualifications, and (c) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.

30. The *Administrative Staff College of India* (1994) recommended, inter alia, that (a) the SPCBs be reoriented for implementing the instrument mix of

10 (1985) 4 SCC 417 : 1986 SCC (L&S) 88

11 (2000) 4 SCC 309 : 2000 SCC (L&S) 670

12 Final Report prepared by the Maharashtra Pollution Control Board in 2005 on Institutional Capacity Building highlights the recommendations made by the Bhattacharya Committee, the Belliappa Committee and the ASCI Study.



a legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes, (b) an Annual Environmental Quality Report be prepared by every SPCB for the State concerned, (c) an inventory of discharges and effluents disaggregated to the district level be prepared, (d) a research cell be formed in each SPCB and a network be established with the proposed clean technology centre, and (f) model environmental impact assessments be prepared for major categories of industries.

b 31. Finally, the *Menon Committee*¹³ made recommendations that are a part of the communication of 16-8-2005 referred to above. It was also recommended that (a) in general, State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff, (b) the statutory independence and functional autonomy given to the SPCBs should be protected and the Boards should be kept free from political interference. The Boards should be enabled to make independent decisions in this regard, and (c) the Chairperson of the SPCB should be a full-time appointee for a period of five years and the Member-Secretary of the SPCB should also be appointed for a period of five years.

d 32. All these suggestions and recommendations are more than enough for making expert and professional appointments to the SPCBs being geared towards establishing a professional body with multifarious tasks intended to preserve and protect the environment and consisting of experts. Any contrary view or compromise in the appointments would render the exercise undertaken by all these committees completely irrelevant and redundant. Surely, it cannot be said that the committees were not constituted for the purpose of putting their recommendations in the dustbin.

e 33. Unfortunately, notwithstanding all these suggestions, recommendations and guidelines the SPCBs continue to be manned by persons who do not necessarily have the necessary expertise or professional experience to address the issues for which the SPCBs were established by law. The Tata Institute of Social Sciences in a report published quite recently in 2013 titled "Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards" had this to say about some of the appointments to the SPCBs:

g "An analysis of data collected from State Pollution Control Boards, however, gives a contrasting picture. It has been observed that time and again across State Governments have not been able to choose a qualified, impartial, and politically neutral person of high-standing to this crucial regulatory post. The recent appointments of Chairpersons of various State Pollution Control Boards like Karnataka (A, a senior BJP leader), Himachal Pradesh (B, a Congress Party leader and former MLA), Uttar Pradesh (C appointed on the recommendation of SP leader X), Arunachal Pradesh (D, a sitting NCP Party MLA), Manipur Pollution Control Board (E, a sitting

h ¹³ *Menon Committee*, constituted pursuant to an order passed by this Court on 14-10-2003 in *Research Foundation for Science v. Union of India*, (2005) 10 SCC 510.

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MLA), Maharashtra Pollution Control Board (*F*, a former bureaucrat) are in blatant violation of the Apex Court guidelines. The Apex Court has recommended that the appointees should be qualified in the field of environment or should have special knowledge of the subject. It is unfortunate that in a democratic set-up, key enterprises and boards are headed by bureaucrats for over a decade. In this connection, it is very important for State Governments to understand that filling a key regulatory post with the primary intention to reward an ex-official through his or her appointment upon retirement, to a position for which he or she may not possess the essential overall qualifications, does not do justice to the people of their own States and also staffs working in the State Pollution Control Boards. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board. It has also been argued by various environmental groups that if the Government is unable to find a competent person, then it should advertise the post, as has been done recently by States like Odisha. However, the State Governments have been defending their decision to appoint bureaucrats to the post of Chairperson as they believe that the vast experience of IAS officers in handling responsibilities would be easy. Another major challenge has been appointing people without having any knowledge in this field. For example, the appointment of *G* with maximum qualification of Class X as Chairperson of the State Pollution Control Board of Sikkim was clear violation of the Water (Prevention and Control of Pollution) Act, 1974.”¹⁴

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34. The concern really is not one of a lack of professional expertise — there is plenty of it available in the country — but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't-care-less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environment degradation and issues of pollution. Since the NGT was faced with this situation, we can appreciate its frustration at the scant regard for the law by some State Governments, but it is still necessary in such situations to exercise restraint as cautioned in *State of U.P. v. Jeet S. Bisht*¹⁵.

35. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules

14 The names have been deliberately left out by us.

15 (2007) 6 SCC 586

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- a within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs.
- b We make it clear that it is left open to public-spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.

36. The appeals are disposed of in light of the above discussion.

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