

Regarding actual report on NGT Order dated 29.06.2020 in O.A. No. 673 of 2018

Working of SPCBs:

The National Green Tribunal was established on 18-10-2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection, conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. As a specialized body, it is equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues.

I want to draw the kind attention of Hon'ble NGT towards the **working policies** of State Pollution Control Board (SPCBs) in India which are extremely blurry and greatly affected by the current state politics. As Section 10 under the NGT Act, 2010 gives the Tribunal power to regulate its own procedure, I believe that this problem can only be solved by this Hon'ble Court.

Current Problems:

The current scenario in most of the SPCBs is that the powers of Field-Officers are extremely weak and there is no definite pattern/policy for the working of SPCBs. The orders/judgements of Hon'ble NGT are being followed, however, some influential people are able to change the system bypassing these orders. Fearing my protection, I won't divulge all the details, but give you an case example of a real event. A very influential person owns a Pyrolysis plant somewhere in North India which is an extremely polluting unit and causing great health hazard. However, there is no one in the SPCB who can go against that unit, and if anyone does, he might be arbitrarily transferred or harassed. In other words, he doesn't have any immunity even from his working organization's code and rules as there is no specific policy in working of SPCB to protect him. Contrarily, if anyone provide favors to that specific industry, he gets the most of the commensurate area. This area under the Field Officer is not fixed. It can be randomly changed by the influence of the industry people.

An honest Field-Officer, working for environment and visiting the industries is under immense pressure. The pressure is that if he reports the violation by the Industries owned by influential people, he may get transferred. The pressure that if he doesn't work according to his seniors, he may be transferred to place far away from home; Or, in an area where there will be no work.

Due to the irregularities in the working policy of SPCB, the small businessman gets hurt doing the violations unknowingly and the large players doesn't get caught even if its volume of pollution is 100 times more.

Since, The Tribunal is not bounded by the procedure laid down under the Code of Civil Procedure, 1908, but guided by principles of natural justice, I request you to please look into this matter and direct the CPCBs to make a uniform policy about the working of all the SPCBs such that Field-Officer should be free and independent about the reporting.

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.

The 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, 1981 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).

The Field-Officer must not be pressurized with fear of Transfer or Change of Jurisdiction Area or otherwise, in the absence of any concrete policy, any significant judgements passed by Hon'ble NGT will be mere piece of papers and won't be able to applied on grounds.

The Menon Committee Constituted pursuant to an order passed by this Court on 14th October, 2003 in Writ Petition (Civil) No. 657/1995 made recommendations that are a part of the communication of 16th August, 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.

The Hon'ble Supreme Court in Civil Appeal 1359 of 2017 has stated that:

"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.

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

*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 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. 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.***

My request take cognizant of the judgement in line with the recommendation (c), 29th recommendation Menon Committee (constituted in pursuant to orders passed by the Apex Court I'd like the Hon'ble court to extend protection vis-à-vis working area and duration of working in an SPCB unit to field officer as well where it is actually required and to provide protection as well as security from political influence and even from the pressure of immediate reporting officer such that nothing comes in between the duty and the duty could be performed without any external pressure and the field officer could be liable for any offense happening.