A TECHI TAGI TARA

v.

RAJENDRA SINGH BHANDARI & ORS.

(Civil Appeal No. 1359 of 2017)

B SEPTEMBER 22, 2017

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

National Green Tribunal Act, 2010 – ss.2(m), 14 and 15 – Challenge to the constitution of State Pollution Control Boards (SPCBs) before National Green Tribunal – NGT while observing that members appointed in SPCBs of various States lacked expertise/ qualifications as suggested by Central Govt., issued directions to State Governments to reconsider the appointments already made and also laid guidelines for appointment to the SPCBs – Propriety of – Held: NGT exceeded its jurisdiction in directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs – For NGT to exercise its jurisdiction, there must be a substantial question relating to the environment and that question must arise in a dispute – There must be a claimant raising that dispute which dispute is capable of settlement by NGT by grant of some relief u/s.15 – However, appointment of the Chairperson and members of SPCBs can neither be classified as a substantial question relating to the environment nor can it be a 'dispute' as such or even for the purpose of the 2010 Act –Such appointments can be disputes for constitutional courts to resolve through a writ of quo warranto *–Directions issued by NGT set aside as being without jurisdiction – However, in view of the fact that many disconcerting facts have come out with regard to appointments/nominations made to SPCBs, directions issued to executive in all the States to frame guidelines/recruitment rules within six months and ensure that suitable professionals and experts are appointed to the SPCBs – Further, it is left open to public spirited individuals to move appropriate High Court for 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 – Constitution of India – Arts. 21, 48A, 51A(g) – Water (Prevention and Control of*

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Pollution) Act, 1974 – s. 4(2), 8 – Air (Prevention and Control of Pollution) Act, 1981 – s.5(2), 10. A

Environment – State Pollution Control Boards (SPCBs) constituted u/ss. 4(2) of Water Act and 5(2) of Air Act – Appointments to – Importance of deliberative process – Discussed – Water (Prevention and Control of Pollution) Act, 1974 – s. 4(2), 8 – Air (Prevention and Control of Pollution) Act, 1981 – s.5(2). B

Environment – Preservation and protection of – Duty of – Discussed.

Words and Phrases – "Dispute" – Meaning of, in the context of National Green Tribunal Act, 2010 – Explained. C

Disposing of the appeals, the Court

HELD: 1.1 The protection and preservation of the environment is extremely vital and unless this responsibility is taken very seriously, particularly by the State Governments and the State Pollution Control Boards (SPCBs), there will be adverse consequences for future generations. Issues of sustainable development, public trust and intergenerational equity are not mere catch words, but are concepts of great importance in environmental jurisprudence. Perhaps appreciating and anticipating this, Article 48A was introduced in the Constitution of India. Article 51A (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 wild life, and to have compassion for living creatures. Apart from the natural law obligation to protect and preserve the environment, there is also a constitutional obligation to do so. Article 21 of the Constitution has been given a very wide amplitude by several decisions of this Court, including on issues concerning the environment. [Para 2] [964-D-G] D E F

1.2 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 G H

A statutory authorities – more so, because statutory authorities are the creation of a law made by a competent legislature, representing the will of the people. 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 B 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). [Paras 3, 4] [965-D-E]

C 2.1 On a combined reading of Sections 2(m), 14 and 15 of the National Green Tribunal Act, 2010, it is clear to that for exercise of jurisdiction by NGT 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 D 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. The appointment of the Chairperson and members of the SPCBs cannot be classified E 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 normally understood. [Paras 17, 18] [979-D-E; 979-F-G]

F 2.2 In the context of the 2010 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. The appointments concerned in the present case are not 'disputes' as such or even disputes for the G purposes of the 2010 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

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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. The anxiety of the NGT to preserve and protect the environment as a part of its statutory functions, is understood but these concepts cannot be extended 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. 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. [Paras 19, 20] [980-C-G]

2.3 While it is beyond the jurisdiction of the NGT and also beyond the jurisdiction of the Supreme Court to lay down specific rules and guidelines for recruitment of the Chairperson and members of the SPCBs, 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. The entire scheme of Article 48A, Article 51A(g) and Article 21 of the Constitution, 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 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.[Paras 22, 23] [981-E-F, H]

3. Some States have implemented the order of the NGT and removed some members while others have approached Supreme 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 it is left 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

A public interest issue and the situation cannot be reversed. [Para 21] [981-B-C]

Guidelines by various Committees for the appointment of the Chairperson and members of the SPCBs –

B 3.1 The Bhattacharya Committee (1984) proposed that the structural organization 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) C upgrading regional laboratories, (c) providing each Board with at least one mobile laboratory, (d) creating a centralized 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. [Para 26] [983-D-F]

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3.2 Similarly, the Belliappa Committee (1990) recommended (a) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (b) effecting suitable changes in the Boards recruitment policy to enable them induct persons with E suitable academic qualifications, and (c) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years. [Para 27] [983-G; 984-A]

3.3 The Administrative Staff College of India (1994) recommended, *inter alia*, that (a) the SPCBs be reoriented for F implementing the instrument mix of 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 concerned State, (c) an inventory of discharges and effluents disaggregated to the G 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. [Para 28] [984-B-C]

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3.4 The Menon Committee made recommendations that are a part of the communication dated 16th August, 2005 of the Ministry of Environment and Forest (MoEF). 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. [Para 29] [984-D-E]

4. 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 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 would be appropriate that the Executive in all the States frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by Supreme Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Further, 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. [Paras 31-33] [984-H; 985-A-B; 986-F-G; 987-A]

Binay Kumar Sinha v. State of Jharkhand (2002) 50 BLJR 2223 – approved.

A *Prabhakar v. Joint Director, Sericulture Department* **(2015) 15 SCC 1 : [2015] 9 SCR 890**; *State of Punjab v. Salil Sabhlok* **(2013) 5 SCC 1 : [2013] 5 SCR 18**; *Ashok Kumar Yadav v. State of Haryana* **(1985) 4 SCC 417 : [1985] 1 Suppl. SCR 657**; *In R/o Dr. Ram Ashray Yadav* **(2000) 4 SCC 309 : [2000] 2 SCR 688 – relied on.**

B

State of U.P. v. Jeet S. Bisht. **(2007) 6 SCC 586 : [2007] 7 SCR 705 – referred to.**

Case Law Reference

C

(2002) 50 BLJR 2223	**approved**	**Para 8**
[2015] 9 SCR 890	**relied on**	**Para 18**
[2013] 5 SCR 18	**relied on**	**Para 23**
D **[1985] 1 Suppl. SCR 657**	**relied on**	**Para 25**
[2000] 2 SCR 688	**relied on**	**Para 25**
[2007] 7 SCR 705	**referred to**	**Para 32**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1359 E of 2017.

From the impugned final Order dated 24.08.2016 passed by the National Green Tribunal, Principal Bench, New Delhi in Original Application No.318/2013

F WITH

Civil Appeal No. 1561 of 2017

Civil Appeal No. 4917 of 2017

Civil Appeal No. 4936 of 2017

G Civil Appeal No. 5735 of 2017

Civil Appeal No. 1360 of 2017

Civil Appeal No. 2481 of 2017

Civil Appeal No. 526 of 2017

H Civil Appeal Nos. 8377-8378 of 2017

Civil Appeal No. 9498 of 2017 A

Civil Appeal No. 10471 of 2017

Civil Appeal Nos. 10472-10473 of 2017.

P.S. Narasimha, ASG, A. Mariarputham, Adv. Gen., Ranji Thomas, Subramonium Prasad, Jaideep Gupta, Sr. Adv., V.N. Raghupathy, Nishant Ramakantrao Katneshwarkar, Ms.Deepa Kulkarni, Amit Agarwal, Sanjay Kumar Visen, M.R. Shamshad, Tushar Mehta, Dhruv Pali, Himanshu Pal, Ms.Aruna Mathru, Avneesh Arputham, Ms. Anuradha Arputham, Amit Arora Ms.Simran Jeet (for M/s Arputhum Aruna and Co.), Guntur Prabhakar, Ms. Prerna Singh, Ms. Rachana Srivastava, Ms.Monika, Sukrit R. Kapoor, S.S. Shamshery, 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 Kumar Gaur, Ashok Kumar Singh, Advs. for the Appellant. B C

A.S. Nadkarni, ASG, D.K. Singh, AAG, Vivek Gupta, Mukesh Verma, Pawan Kumar Shukla, Yash Pal Dhingra, M. Shoeb Alam, Ms. Fauzia Shakil, Ujjwal Singh, Mojahid Karim Khan, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Ms.Ruchira Gupta, Shishir Deshpande, Ms.Mona Sinha, Arjun Garg, Ranjan Mukherjee, P.V. Yogeswaran, M. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, K. Luikang Michael, Z.H. Isaac Haiding, Som Raj Choudhary, Raja Chattejee, Chanchal Kumar 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, Saurabh Agrawal, Advs. for the Respondents D E F

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. This batch of appeals is directed against the judgment and order dated 24th August, 2016 passed by the National Green Tribunal, Principal Bench, New Delhi (for short 'the NGT') in Original Application No. 318 of 2013.[1] On a reading of the judgment and order passed by the NGT, it is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State G

[1] Rajendra Singh Bhandari v. State of Uttarakhand and others H

A 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 specialized statutory bodies and therefore did not deserve their appointment or nomination. While 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 B directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs, however well-meaning they might be. 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, C 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.

2. Why is it important to be more than careful in making such D 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 catch words, but E are concepts of great importance in environmental jurisprudence. Perhaps appreciating and anticipating this, Article 48A was introduced in the Constitution and this Article reads as follows:

> **"Protection and improvement of environment and safeguarding of forests and wild life** - The State shall endeavour F to protect and improve the environment and to safeguard the forests and wild life of the country."

Similarly Article 51A (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 wild G life, and to have compassion for living creatures.[2] It is quite clear that

[2] 51A. **Fundamental duties.**—It shall be the duty of every citizen of India—
(*a*) to (f) xxx xxx xxx
(*g*) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) to (k) xxx xxx xxx

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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 witnessing 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.

3. 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.

4. 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[3] 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).

5. 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):

> "4(2) A State Board shall consist of the following members, namely:-

[3] Henceforth the Water Act and the Air Act

A (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 C by the State Government from amongst the members of the local authorities functioning within the State;

(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, D 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;

E (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."

6. One of the earliest communications on our record encouraging F professionalism in the SPCBs with a view to empowering them is a letter of 26th September, 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 G necessity of taking relevant factors into consideration while making appointments to the SPCBs. The letter reads as follows:

"Secretary
Ministry of Environment & Forests
Government of India

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September 26, 1997 A

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 B recent years, additional responsibilities have been assigned to them for enforcement of various statutes. Hence, these organizations 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 C 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 requisites D professional knowledge and experience for providing effective leadership to their organizations. 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 E these posts are made without due consideration to such requirements as envisaged under the Acts. Also, another major problem being faced by these organizations is on account of frequent changes of Chairmen and Member Secretaries. I request you to kindly ensure that appropriate persons are appointed for F 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.

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With regards

Yours sincerely,

Sd/-

(Vishwanath Anand)"

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7. More importantly and perhaps keeping the diverse nature of activities of the SPCBs in mind, a conference was held in Coimbatore on 29th and 30th January, 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 3rd July, 2001. This letter reads as follows:

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

July 3, 2001

Dear

In the National Conference of Ministries of Environment and Forests held at Coimbatore on January 29-30, 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

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

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

(v) Streamlining of Consent/Authorization procedures.

(vi) Inventorization of polluting sources and pollution load.

(vii) Formulation of Annual Action Plans.

(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.

I look forward to your response at the earliest.

With regards.

Yours Sincerely,

Sd/-

(P.V. Jayakrishnan)

To Chief Secretaries of all States/UTs"

8. 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 15th May, 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:

"4. On 4th April 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:— "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'. He has no other academic or technical qualification whatsoever. When, by referring to Section 5(2)(a) of the Air (Prevention & 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

[4] (2002) 50 BLJR 2223

course of our conversation with Sri Shahdeo, we were constantly helped and assisted by Mr. Poddar, learned Addl. Advocate General. We actually impressed upon Mr. Poddar the need of assisting Sri 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 A.A.G. to produce before us the original records of the Govt. relating to the appointment of Mr. Shahdeo."

5. 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:

"41. 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."

9. Notwithstanding the above decision, communications and orders, the State Governments continued to display disinterest in the matter of professional appointments to the SPCBs. This led to another communication from the MoEF on 16th August, 2005 (which still did not have the desired effect) and this communication reads as follows:

"Supreme Court Matter
Most Immediate
By Speed Post

No. 23-8/2004-HSMD (Vol.II)
Government of India
Ministry of Environment & Forests
(Supreme Court Monitoring Committee)

Room No, 927, Paryavaran Bhawan
C.G.O. Complex, Lodhi Road
New Delhi-110003 108
Dated 16th August, 2005

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

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

A Dear Sir,

The Supreme Court by its order dated 14-10-2003 in the Writ Petition (Civil) No. 657/1995 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
B 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 Board (SPCBs), Pollution Control Committee (PCCs) of UTs were not constituted in accordance
C with the provisions given in the Water Act, 1994 and the Air Act, 1981.

Chairperson of the Board :-

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

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

5. The MGK Menon Committee had recommended in its report that "The Chairman of the Pollution Control Boards & Committees should be individuals with a sense of vision and a feeling for the
F future. They must have an understanding of the complexity of modern science and technology 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
G Chairperson of the Board should be on full time basis.

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,

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H [5] Research Foundation for Science v. Union of India

possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control. A

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

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 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 14.10.2003, 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 28-03-2005 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 paragraph - 41.1 of the Supreme Court's order dated 14.10.2003. G

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A 13. The committee is also of the view that recommendations of the MGK 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.

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

1) The Bhattacharia Committee, 1984

2) The Belliappa Committee, 1990

C

3) The ASCI Study, 1994

4) Study of the Sub Group, 1994

15. All these studies were considered during the Evaluation Study on "Function of the Pollution Control Board" prepared by the D Programme Evaluation Organization 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 E control hold the upper hand".

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 F politicians or administrative officers).

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.

G 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

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nominated to these positions meet the statutory norms and the requirements as indicated in the MGK Menon Committee Report and the Order of the Supreme Court dated 14.10.2003 and further necessary action will be taken in the matter.

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

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10. 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 utilize their expertise in preserving and protecting the environment, including air and water.

11. 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 Act[6] relating to holding meetings of the SPCB.

12. To make matter worse, despite this Court passing an order on 8th January, 2008 (in IA No.4/2007 in SLP (Civil) No.6023/2006) 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 appointment of members in the SPCB[7], 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.

13. 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.

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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:

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:

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.

[7] "I.A. No. 4/2007 be treated as an original petition to be listed along with SLP (C) No. 6023/2006. 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."

IA No.4/2007 was converted to W.P. (Civil) No.85/2008 which was listed along with SLP (Civil) No.6023/2006

14. 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.

15. 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.

16. 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 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.
>
> (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.
>
> (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:

A 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."

This provision cannot be read in isolation but must be read in conjunction B 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.—

C (1) The Tribunal may, by an order, provide,—

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

D (b) for restitution of property damaged;

(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 E (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(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 F 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 G exceeding sixty days.

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

(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." A

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

"(*m*) "substantial question relating to environment" shall include an instance where,— B

(*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

17. 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

18. 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. Joint Director, Sericulture Department***[8] the following 'definition' of dispute was noted in paragraphs 34 and 35 of the Report: F G

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

[8] (2015) 15 SCC 1

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A "'*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:

B "*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 C examined."

19. 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 D 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 E 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 F 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.

G 20. 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.

21. It appears to us that the NGT realized its limitations in this regard and therefore issued a direction to the State Governments to H 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.

22. 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 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 adverted to the provisions of the Constitution including Article 48A, Article 51A(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 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.

23. 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 Chairperson and members of the SPCBs, we are of opinion that there should be considerable deliberation before an appointment is made

A 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 the ***State of Punjab v. Salil Sabhlok***[9] in which it was observed with reference to appointments to the Public Service Commission that besides express restrictions in a statute or the B 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 C discretion or power to appoint anybody that it chooses to do.

24. It was also held in ***Salil Sabhlok*** (supra) 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 D issuing guidelines, it was held as follows:

> "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 E 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 F 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 G 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

[9](2013) 5 SCC 1

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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."

25. In ***Ashok Kumar Yadav v. State of Haryana***[10] this Court observed that 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 Public Service Commissions. Similarly, in ***In R/o Dr Ram Ashray Yadav***[11] it was held that 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.

26. 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 organization 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 centralized 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]

27. Similarly, the **Belliappa Committee** (1990) recommended (a) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (b) effecting suitable changes in the Boards recruitment

[10] (1985) 4 SCC 417
[11] (2000) 4 SCC 309
[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 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.

28. The **Administrative Staff College of India** (1994) recommended, *inter alia*, that (a) the SPCBs be reoriented for B implementing the instrument mix of 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 concerned State, (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 C proposed clean technology centre and (f) model environmental impact assessments be prepared for major categories of industries.

29. Finally, the **Menon Committee**[13] 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 D 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 E 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.

30. All these suggestions and recommendations are more than enough for making expert and professional appointments to the SPCBs F 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 G were not constituted for the purpose of putting their recommendations in the dustbin.

31. Unfortunately, notwithstanding all these suggestions, recommendations and guidelines the SPCBs continue to be manned by

[13] Constituted pursuant to an order passed by this Court on 14th October, 2003 in H Writ Petition (Civil) No. 657/1995

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:

> "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 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

A 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, State Governments have been defending their decision to appoint bureaucrats to the post of Chairperson as B 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 State Pollution Control Board of Sikkim C was clear violation of Water Pollution and Prevention Act, 1974."[14]

32. 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-D 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 E in ***State of U.P. v. Jeet S. Bisht.***[15]

33. 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 F 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, G 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

[14] The names have been deliberately left out by us

H [15] (2007) 6 SCC 586

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. A

34. The appeals are disposed of in light of the above discussion. B

Divya Pandey Appeals disposed of.