

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 318 of 2013
And
Review Application No. 36/2016
(M. A. No. 1450/2016 & M. A. No. 04/2017) in
O. A. No. 318/2013**

**Rajendra Singh Bhandari Vs. State of U. K. & Ors.
And
Rajendra Singh Bhandari Vs. State of Uttarakhand & Ors.**

**CORAM: HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

Present: Applicant:

Respondents:

Mr. Neeraj Jain & Mr. Aniruddh Josh, Advs for Applicant in Original Application No. No. 318/2013
Mr. Rajesh Kumar Das Adv. for UT of Lakshadweep Administration.
Mr. Abhishek Yadav, Adv. for State of Uttar Pradesh.
Mr. Pinaki Misra Sr. Adv. with Mr. Mukesh Verma adv. for MPPCB.
Mr. Mukesh Verma, Adv.
Ms. Aprajita Mukherjee, Adv. for State of Meghalaya
Mr. Avijit Roy, Adv. for Assam PCB
Mrs. D. Bharathi Reddy, Adv. for State of Uttarakhand.
Mr. Nikhil Nayyar Adv for APPCB and Chairman, TSPCB
Mr. Som Raj Choudhary, Adv. for State of Odisha
Mr. Raja Chatterjee and Ms. Chanchal Kr. Ganguli, and Mr. P. Sachdev, Advs. for West Bengal
Ms. Nidhi Bhuwania and Ms. K. Enatoli Sema, Advs. For Nagaland PCB
Mrs. Divya Prakash Pandey, Adv. for Ministry of Environment, Forest and Climate Change .
Mr. Guntur Pramod Kumar and Mr. Prashant Mathur, Advs for State of AP.
Mr. Aruna Mathur, Standing counsel alongwith Mr. Avneesh Arputham, Mr. Anuradha Arputham, and Mr. A. Mariarputham Advs. for State of Sikkim.
Mr. Gopal Singh, Adv., Ms. Varsha Poddar, Adv. for State of Tripura.
Mr. Shubham Bhalla, Adv. for Chandigarh Environment Department.
Mr. Rajul Shrivastan, Adv. for MPPCB.
Mr. A. K. Panda Sr. Adv. with Mr. Aniruddha Purushutyham, Advs. For Orrisa SPCb
Mr. Salik Shafique Adv for Mr. Sanjay Upadhayay Adv. for State of Rajasthan.
Mr. Tarunvir Singh Khehar, Ms. Guneet Khehar and Mr. Charan Jeet Singh, Advs For GNCTD
Mr. Jogy Scaria, Adv. for Kerla State Pollution Control Board
Mr. Nishe Rajen Shonker, and Ms. Vishnu Sankar, Advs. for State of Kerala
Mr. Sarthak Chaturvedi and Mr. Subham Jaiswal, Advs. for Andaman and Nicobar Island
Mr. V.K. Shukla and Ms. Vijay Lakshmi, Advs. for State of MP.
Mr. P. Venkat Reddy and Mr. Prashant Kr. Tyagi, Advs. For State of Telangana
Mr. Pradeep Misra & Mr. Daleep Dhyani Advs. for UPPCB.
Ms. Sunita Sharma, Adv. for State of Punjab.
Mr. Sapam Biswajit Meitei, Mr. Shantwanu Singh and Mr. Muraari Babu, Advs for State of Manipur
Mr. Rajul Shrivastava, Adv. for MPPCB
Mr. Rajesh Kumar Das. Adv. for UT Lakshadweep Administration
Ms. Bausuri Swaraj and Ms. Sakshi Kakkad, Advs. For

State of Chhattisgarh
Mr. Naginder Benipal, Adv.
Ms. Seema Sharma Dy. AG and Mr. D. K. Thakur, AAG
for State of HP
Mr. Edward Belho, Adv. alongwith Mr. K. Luikang
Michael and Ms. Elix Gangmei Adv. for State of
Nagaland.
Mr. Shuvodeep Roy, Adv. for State of Assam
Mr. Amit Agarwal, Adv. for West Bengal PCB
Mr. Anil Grover, AAG and Mr. Rahul Khurana, Adv.
for State of Haryana
Ms. Yogmaya Agnihotri for Respondnet / CECB
(Chhathisgarh Environment Conservation Board
Mr. Subramonium Prasad, AAG, Mr. R. Rakesh
Sharma, Adv. for State of Tamil, TNPCB.
Ms. Priyanka Sinha, Adv. for State of
Jharkhand.
Mr. Gautam Singh and Mr. Rudreshwar Singh,
Adv.
Mr. Devraj Ashok for State of Karnataka.
Mrs. Hemantika Wahi alsong with Shodhika
Sharma for State of Gujarat and GPCB
Mr. Soni Raj choudhary, State of Ordisha
Mr. Tayenjam Momo Singh, Adv. for Meghalaya
SPCB
Mr. Jai A. Dehadrai and Ms. Shivawgini Gupta,
Adv. For State of GOA
Ms. Sunita S. Adv.

Date and Remarks	Orders of the Tribunal
<p> Item No. 01 & 02 June 08, 2017 </p>	<p> 1. Heard the learned counsels for the respective parties and carefully perused the replies to the Show Cause notices filed by and on behalf of Chairmen Pollution Control Boards. </p> <p> 2. At the outset, we have inquired from the Learned Counsels present before us in respect of further progress or development in the SLPs filed by some of the States before the Hon'ble Supreme Court. We have been unanimously informed that no further development, since the last hearing when only notices were issued, has taken place. </p> <p> 3. In response to the show-cause notices issued to the Chairmen of Pollution Control Board/Committee, some of them have filed their replies. On perusal of the same, it is revealed that they have reiterated their stand taken at the time of adjudication of original application. The contentions which has now been sought to be </p>

made, had already been thoroughly considered by the Tribunal while deciding the Original Application.

4. The Tribunal had made observations in the judgment that the post of the Chairman of Pollution Control Board/Committee is of sensitivity and responsibility, as the entire environmental status of the State would depend on the functioning of the State Pollution Control Board where the Chairman is the head of the organization. The concept of adhocism/temporary posting/stop gap arrangement had been deprecated by the Tribunal and it held that only duly qualified persons, with fixed tenure, are required to be appointed. But this has not been done despite of the fact that sufficient time for compliance of the Judgment was granted. Most of the States have not complied with and have not taken steps to do the needful. Applications for execution of the Judgment had come to be filed before the Tribunal. Therefore, Status Reports were called from all the States, vide order dated 2nd May, 2017. But information in this regard was not forthcoming from the States. Ultimately show cause notices were issued to all Chairmen of the respective Pollution Control Board/Committee as to why they should not be asked to cease to function as Chairman. Along with it, notices were also issued to the Chief Secretaries of every State.

5. The replies have now been filed, only by some of them, to the show cause notices dated 30th May, 2017. The Chairmen of the Boards who filed the Replies, have not only tried to justify that they are qualified for the appointment on the post but have also interpreted the

relevant provisions of law in the manner suitable to them which was already held to be incorrect by the Tribunal while deciding the Original Application.

6. In order to refresh the findings of the judgment we may reiterate them, in respect of the educational qualification and experience which are required for appointment of Chairman of the Pollution Control Board/Committee, which are as follows:-

“125.....A condition precedent is that a person should have knowledge in relation to environmental protection and subsequently he has experience of administering institution dealing with matter relating to Environment protection that he becomes eligible for nomination as Chairman. Experience of administering institution relating to environment alone, without knowledge in relation to environment protection, would not make a person eligible for being nominated by the State Government as Chairman of the Board.

126. It is interesting to note here that Parliament has, under the Air Act which is a later Statute and is pari materia to the Water Act consciously intended not to provide for nomination of a person as Chairman of the Board who only has knowledge and experience in administering Institutions dealing with matters relating to Environmental protection:

“...Chairman, being a person, having special knowledge or practical experience in respect of matter relating to environmental protection, to be nominated by the State Government.” [ref. Section 5(2)(a) of the Air Act, 1981]

This statutory development of conscious deletion makes the phrases “special

knowledge” and “practical experience” extremely important and mandatory for the State Governments while nominating a person as Chairman of the State Board. More so, as the Board constituted under the Water Act has also been entrusted to perform the functions under the Air Act.

127. Thus special knowledge or practical experience, in respect of matters relating to environmental protection is of very wide amplitude and must be understood with reference to the fundamental purpose of Water Act as well as functions of the State Board summarized under Section 17 of the Water Act. The person to be nominated as Chairman of the Board must have surpassing and exceptional knowledge in regard to issues relating to prevention, control and abatement of water pollution specified 142 under Section 17 of the Water Act. Parliament has certainly not desired administrators or executives to indulge in a guess-work. The Chairman must have such special knowledge that makes him or her capable of maintaining or resorting the wholesomeness of water as well as planning comprehensive programme for prevention, control and abatement of pollution of streams, lakes, wells and water resources in the State.”

“139. Such numerous powers and functions lies with the Board which are by and large technical in nature and it requires that a Chairman has to have adequate knowledge and experience in respect of matter relating to environment protection so as to see that the Board functions properly, in accordance with law. Therefore it is imperative that for being eligible to be a Chairman one should have vast information and deep understanding through

exceptionally good learning in environment protection laws or has knowledge which he has gained through practice after actually doing or use of something rather than theory. In such circumstances the eligibility criteria given under the Act in Section 4(2) (a) of Water Act and 5(2) of the Act has to be given a purposive interpretation so as to cater the requirement for proper execution of the functions of the Board.”

7. Apart from this, the Tribunal had dealt with in the Judgment some specific instances in the following manner:-

“148-We have already discussed at great length the qualifications, practical experience or special knowledge that needs to be possessed before a person can be appointed as Chairman or Member Secretary in accordance with the provisions of the Acts of 1974 and 1981 respectively. To take up the example of Chairman and Member Secretary of Uttarakhand Pollution Control Board, we may notice that the Chairman is a Senior IAS officer holding a degree of MBBS and the Member Secretary is a member of IRS, having M.Sc. in Soil Science and Agriculture Chemistry. The Chairperson under both these Acts could be appointed only if he possess special knowledge or practical experience relating environmental protection. While under Water Act it can also be a person having special knowledge and experience in administering institutions dealing with the matters of environment. At the cost of repetition, we may notice that the Chairman to be appointed to a State/Centre Board if is possessing special knowledge then he should essentially acquire such special knowledge after obtaining a degree of post Graduation in

Environmental Sciences and Environmental Management or Degree in Engineering/ Technology in environmental engineering or an equivalent degree thereto. If he does not possess such degree the experience acquired by him in whatever capacity it might be, in our opinion would not satisfy the requisites of Section 5(2)(a) and 4(2) (a) of the respective Acts. If such Chairperson is being appointed as having practical experience then it would be essential for such person to acquire graduation degree in Science relating to subject like Geology, Botany, Chemistry or allied subjects. The practical experience should be only relating to the field of environment. In respect of other criteria of knowledge and experience in administering institution dealing with the matters of environment protection the person should have gained such administrative experience but must possess graduation degree in science subjects and basic knowledge of environment protection.”

8. As to know how some of the Chairmen of the State Pollution Control Board are being manned, without having requisite qualification, by bureaucrats, politicians, etc. can be seen in the case of Pollution Control Board of State of Uttarakhand, Sikkim, Rajasthan, Maharashtra, etc. It is important to note that in most of the cases who have filed replies, the Chairmen of the Pollution Control Board are either still continuing since prior to passing of the judgment or they have been changed, but by persons who are also lacking in qualification or experience as their predecessors.

Another interesting thing which came to our

notice while we were going through the reply to the show cause notice filed by the State of Rajasthan and during the course of hearing that the present Chairman of the Rajasthan State Pollution Control Board was earlier nominated as full time Chairman from 12-02-2014 to 03-02-2016. Thereafter, she was posted as Secretary, Mines and Geology and also given additional charge of the Pollution Control Board from 04-07-2016. Needless to say that clearances are sought in respect of mines and it is to be considered and cleared by none else but the State Pollution Control Board.

9. There are few State Pollution Control Boards/Committee where the State Governments have initiated the process, with regard to appointment of Chairman and framing of relevant rules and regulation in accordance to the judgment. Such states have sought further time to complete the process and they have assured that the same would be completed at the earliest and appointments of Chairmen of the Pollution Control Board/Committee would be made.

10. After having thoroughly and carefully considered the replies filed by the State Pollution Control Board of Himachal Pradesh, Sikkim, Tamil Nadu, Uttarakhand, Kerala, Rajasthan, Telengana, Haryana, Maharashtra & Manipur and also on perusal of their initial stand taken in the reply to the Original Application which were on similar lines, we are of the view that despite of ample time and opportunity having been given they have failed to comply/implement the judgment passed by the Tribunal.

11. The Tribunal cannot remain a silent spectator in respect of improper and illegal working of Pollution Control Board/Committee and its consequence and repercussion to the public at large. It is rather strange that despite of more than sufficient time having been given by the Tribunal the aforesaid States did not take steps to implement the judgment passed by the Tribunal on 24th August, 2016. Initially, by the judgment itself, a period of 3 months was granted to the States to appoint Chairmen. The said time expired in the month of November and thereafter more than 6 months have lapsed but we find that the States are not at all serious in implementing the Judgment. On the contrary they are still taking the same stand which they had prior to the passing of the Judgment. This clearly reflects their state of mind and intention. In such view of the matter this Tribunal, after considering the case in its entirety and carefully perusal the reply filed to the show cause notices, has no option but to ask the Chairman of the Pollution Control Boards, mentioned above, to cease from functioning as Chairman.

12. However, we would like to mention here the stand taken, in the reply to the Show Cause notices by State of Punjab, State of UP and Government of NCT of Delhi. In these States process has been initiated and it has been said that same would be completed in near future.

In case of NCT of Delhi it has been submitted that prior to the Judgment, the Chairman of DPCC was appointed in accordance with notification of 2012. It is also mentioned in the reply that requisite steps have

been taken and it is now pending before the CPCB. The learned Counsel for the Government of NCT Delhi/DPCC has given assurance that the process would be completed as earlier as possible, in any case before a period of 3 months.

Similarly, State of Punjab has also started the process and it has been submitted by the Learned Counsel that it shall be completed at the earliest.

On behalf of State of UP it has been clearly stated in the reply as well as by the Learned Counsel representing it, that in the month of August, erstwhile Chairman of UPPCB had been changed and a new Chairman, who according to him is qualified in accordance with Judgment, has been nominated. As regard to framing of rules and regulations in respect of appointment, terms and conditions of the Chairman the State of UP has already initiated the process. The Learned Counsel for State of UP as well as the UPPCB have submitted that 2 months time be granted for framing of rules and regulations and one month thereafter, for appointment of Chairman.

13. In view of the above, we deem it just and proper and in the interest of public at large to order that the Chairman of Himachal Pradesh Pollution Control Board, Chairman of Sikkim Pollution Control Board, Chairman of Tamil Nadu Pollution Control Board, Chairman of Uttarakhand Pollution Control Board, Chairman of Kerela Pollution Control Board, Chairman of Rajasthan Pollution Control Board, Chairman of Telengana Pollution Control Board, Chairman of Haryana Pollution

		<p>Control Board, Chairman of Maharashtra Pollution Control Board and Chairman of Manipur Pollution Control Board shall cease to function as Chairmen of the respective Pollution Control Boards.</p> <p>14. So far Government of NCT of Delhi, DPCC, UPPCB and Punjab Pollution Control Board are concerned, as requested by them, we grant two months time to frame rules and regulations. Thereafter, within a period of one month they shall make appointments of Chairmen of the respective Pollution Control Board/Committee in accordance to them.</p> <p>In case they fail to complete the process and make appointment of the chairmen within three months from today, than the persons now holding the post of Chairmen of the respective State Pollution Control Board shall cease to function.</p> <p>15. Put up on 4th July, 2017.</p> <p style="text-align: right;">.....JM (R. S. Rathore)</p> <p style="text-align: right;">.....EM (Dr. S. S. Garbyal)</p>
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