পঞ্জীভুক্ত নম্বৰ - ৭৬৮ /৯৭ Registered No.-768/97

অসম ৰাজপত্ৰ

সত্যমেব জয়তে

THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্ত্তৃত্বৰ দ্বাৰা প্ৰকাশিত

PUBLISHED BY THE AUTHORITY

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No. 148 Dispur, Tuesday, 2nd March, 2021, 11th Phalguna, 1942 (S. E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
ENVIRONMENT AND FOREST DEPARTMENT

NOTIFICATION

The 25th February, 2021

No.ENG.1/2017/332.- In exercise of powers conferred by section (54) of the Air (Prevention and Control of Pollution) Act, 1981, (Central Act 14 of 1981) the Governor of Assam in consultation with the Board for Prevention and Control of Air Pollution is hereby pleased to make the following rules further to amend the Air (Prevention and Control of Pollution) (Assam) Rules, 1991 herein after referred to as the principal Rules, namely:-

Short title, and commencement

1. (1) These rules may be called Air (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

Amendment of rule 2

2. In the principal Rules, in rule 2, for clause (c), the following shall be substituted, namely :-

"(c) "Board" means "The Pollution Control Board, Assam" constituted under section 4 of the Act.'

Amendment of rule 3

3. In the principal Rules, in rule 3, for sub-rules (1), (2), (3) and (4), the following shall be substituted, namely :-

(A) Appointment of Chairman –

(1) Qualification of Chairman,-

No person shall be eligible for being selected for nomination as the Chairman under clause (a) of sub-section (2) of section 5 of the Act, unless, -

(a) he/she possesses Degree in Engineering/ Technology in Environmental Engineering or an equivalent degree thereto, Post Graduate in Environmental Engineering/ two years MSc in Environmental Sciences/ Environmental Management and has special knowledge and 15 years practical experience relating to Environment protection with regards to industrial pollution control, mitigation , water treatment or air pollution control devices and has rendered at least 25 years of service; or

(b) he/she is or has been an officer under the Central Government or State Government or public sector undertaking or a University or autonomous body or statutory body, and-

(i) holds or held an analogous post on regular basis in the parent cadre or department in the Pay Scale as prescribed for Commissioner and Special Secretary to Government of Assam, i.e., Rs. 1,30,000 (fixed) as per Assam Revision of Pay Rules, 2017; or

(ii) has three years of regular service in the Grade rendered after appointment thereto on regular basis in the Pay Band-4 (Rs. 30,000 – 1,10,000 with Grade Pay of Rs. 17,500) as per Assam Revision of Pay Rules, 2017 in his parent cadre; and

(iii) possesses the qualifications and experience specified in clause (a) above; or

(c) is or has been in an All India Service or in any Civil Service of the State of Assam, holding or held the post of Commissioner and Secretary to the Government of Assam or its equivalent post on regular basis, and possesses a Master's Degree in Science or Bachelor's degree in Engineering and has knowledge and experience of at least 5 (five) years in areas related to environment protection and industrial pollution control activities;

(d) he/she shall be a resident of Assam for a period of not less than 15 (fifteen) years;

(e) for the purposes of this sub-rule, a PhD degree in environmental management from a recognized university or institute and excellent record of peer reviewed research publications and experience of organizing environment related training programmes for service personnel/LLB degree from a recognized university shall be desirable qualification.

Though the provisions of Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Water (Prevention and Control of Pollution) Act, 1974 (Water Act) does not specifically mention that basic academic qualification in Environmental protection is required but the term "special knowledge" covers such a requirement as the legislature cannot be presumed to be oblivious of existence of such basic qualification such as experience in industrial pollution with regards to environment protection.

(2) Mode of recruitment-

Application for appointment of Chairman shall be invited by the Environment and Forest Department, Government of Assam through open advertisement and the Chairman shall be recommended by a Committee consisting of the following members, namely :-

(i)	Chief Secretary, Government of Assam	Chairman
(ii)	Senior-most Secretary of Department of Environment and Forests, Government of Assam	Member Secretary
(iii)	Senior-most Secretary of Department of Personnel, Government of Assam	Member
(iv)	Senior-most Secretary of Department of Science and Technology, Government of Assam	Member
(v)	Director of technical Education, Government of Assam	Member
(vi)	Two expert members from University of Assam / Engineering Colleges of Assam to be nominated by the Chief Secretary, Government of Assam	Member

(3) Pay, allowances and other conditions of service-

(a) The Chairman shall receive pay in the Pay Band 6 of Assam Revision of Pay Rules, 2017, i.e., Rs 1,30,000 (fixed) and other allowances as admissible to officers of the Government of Assam of same pay scale or his pay in his parent organisation or Department, whichever is higher. Retired Government Officers, on being appointed as Chairman, shall be allowed to draw their last pay drawn (as notionally fixed after revision of pay under 7th Pay Commission) less the pension allowed to them and other allowances as admissible currently to officers of his service/cadre serving under the Government.

(b) If the personnel are appointed from Pensioners /retired and re-employed their pay shall be governed by the OM. No. FEB.154/03/1 dtd. 07.04.2004.

(4) In addition to the pay specified in sub-rule (3), the Chairman shall be entitled to,-

(a) A house rent allowance as admissible to the pay scale of Chairman under the Government :

Provided that where the Chairman is allotted an accommodation by the Government, he shall not be entitled to house rent allowance and shall be required to pay a licence fee as applicable for Government officials;

(b) the medical facilities as are admissible to officers of their status under Government of Assam. The retired Government official, appointed as Chairman shall continue to avail the benefit of medical schemes of Central Government and/or Government of Assam or the organisation from which he has retired. The retired officials not availing any such medical benefit from his parent organisation, on being appointed as Chairman shall be extended such benefits as admissible to retired Government officials of his rank and status.

(c) Other facilities like telephone, mobile phone, allotted vehicle, etc. as admissible to equivalent rank officers under the Government.

(5) In case, the Chairman has been appointed by taking an officer on deputation, the Board shall contribute towards leave contribution, pension contribution and any other such contributions prescribed to be made as per service condition of the person taken on deputation. His deputation to Board shall be considered as deputation to "Foreign Service".

(6) The other conditions of service of the Chairman in the matters of allowances, leave, joining time, joining time pay, provident fund, gratuity, age of superannuation and other conditions of service shall be regulated in accordance with such rules and regulations of the Government as are for the time being applicable to officers belonging to the corresponding pay scale stationed at those places.

(7) The upper age until which a person can hold the post of Chairman is 65 (sixty five) years.

(8) The Chairman serving in the Board on deputation and retiring from his respective service while serving in the Board on attaining the age of superannuation, shall draw their retirement benefits like Gratuity, pension, leave encashment, etc. from their parent department or organisation.

(9) The Chairman shall be entitled to travelling allowance and daily allowance, in respect of journeys undertaken by them in connection with their duties, at the rates permissible in the case of Senior Grade Officers under the Government.

(10) The tenure of Chairman in the Board shall be for a term of 3 (three) years from the date of his appointment by the Government of Assam, provided that he shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. In situations like the Government being not in position to appoint a new incumbent as Chairman before the expiry of the term of the Chairman, or Chairman falling suddenly ill or proceeding on leave for a period exceeding 10 (ten) days, the Senior-most Secretary to the Government in Environment and Forest Department shall assume the duties of the Chairman suo-moto, till such time, but not exceeding three months, the incumbent Chairman returns or a new Chairman is appointed.

The term of office of the Chairman should not be extended for more than one term. Such persons should not hold office in the Board in accordance to their tenure in State Government.

(11) Government shall not remove the Chairman of the Board before expiry of his term of office without giving him a reasonable opportunity of show-cause against him, which shall ordinarily be 15 days.

(12) Disqualification - No person,-

(a) who has entered into or contracted a marriage with a person having a spouse living; or

(b) who having a spouse living has entered into or contracted a marriage with any person, shall be eligible for appointment to the said post :

Provided that the Government of Assam may, if satisfied that such marriage is permissible under personal law applicable to such person or the other party to the marriage and that there are other grounds for doing so, exempt any person from the operation of this rule.

(13) Power to relax - Where the Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons

(B) Appointment of Member Secretary –

(1) No person shall be eligible for being selected for appointment as the Member Secretary under clause (f) of sub-section (2) of section 5 of the Act, unless, he is an officer of Central or State Government or Public Sector Undertaking under Central or State Government or University or Government Research Institution or Autonomous or Statutory Body meeting the qualification and experience stated below at (a) and (b) or (c) –

(a) Possessing the following service experience, –

(i) with one year of service in the grade rendered after appointment thereto on regular basis in Pay Band 4, i.e., 30,000 – 1,10,000 with Grade Pay of Rs. 17,500 as

per Assam Revision of Pay Rules, 2017; or

(ii) with two years of service in the grade rendered after appointment thereto on regular basis in Pay Band 4, i.e., 30,000 – 1,10,000 with Grade Pay of Rs. 16,900 as per Assam Revision of Pay Rules, 2017; or

(iii) with three years of service in the grade rendered after appointment thereto on regular basis in Pay Band 4, i.e., 30,000 – 1,10,000 with Grade Pay of Rs. 15,700 as per Assam Revision of Pay Rules, 2017; and

(b) Possessing the following qualification and experience –

(i) Bachelor's Degree in Engineering or Master Degree in Environmental/ Chemical/ Civil/ Biological Sciences with a minimum of 10 (ten) years of experience in the field of Industrial Pollution Control for environment protection;

(ii) Fifteen years of experience in regular Group 'A' posts not below the rank and Pay Scale of Rs. 22,000 – 87,000 with Grade Pay of Rs. 12,700/- as per Assam Revision of Pay Rules, 2017 or its corresponding Pay Band/ Pay Scale of preceding Pay Rules in Government Department or Institution or Public Sector Undertaking or University or Government Research Institution or Autonomous or Statutory Body at the administrative or management level with practical experience in matters relating to scientific, engineering or management aspects of pollution control.

(c) is in an All India Service or in any State Civil Service of the State of Assam, holding the post of Secretary to the Government of Assam or its equivalent post in his parent Department or Organisation on regular basis, and possesses a Master's Degree in Science or Bachelor's degree

in Engineering and has knowledge and experience of at least 5 (five) years in Industrial pollution control for Environment protection.

(d) He shall be a resident of Assam for a period of not less than 15 (fifteen) years.

(2) Mode of recruitment :

Application for appointment of Member Secretary shall be invited by the Environment and Forest Department, Government of Assam through open advertisement and the Member Secretary shall be recommended by a Committee consisting of the following namely:-

(i)	Senior-most Secretary of Department of Environment and Forests in the Government	Chairman
(ii)	Secretary/ Joint Secretary of Environment and Forest Department, Government of Assam	Member Secretary
(iii)	Representative of Department of Personnel, Government of Assam not below the rank of Commissioner and Secretary to the Government	Member
(iv)	Representative of Department of Personnel, Government of Assam not below the rank of Commissioner and Secretary to the Government	Member
(v)	Representative of Department of Science and Technology not below the rank of Commissioner and Secretary to the Government	Member
(vi)	Chairman, Pollution Control Board Assam	Member
(vii)	Director of technical Education, Government of Assam	Member
(viii)	Two expert members from University of Assam / Engineering Colleges of Assam to be nominated by the Chief Secretary, Government of Assam	Member

(3) (a) The Member Secretary shall have option to receive pay either in Pay Band 5 of Assam Revision of Pay Rules, 2017 i.e., Rs. 65,000 – 1, 12,000 with Grade Pay of Rs. 18,500 per month with two percent of annual increment or his pay in his parent department, as he chooses with all the allowances associated with the Pay Band as applicable for Government officers.

(b) If the personnel are appointed from Pensioners /retired and re-employed their pay shall 'be governed by the OM. No. FEB.154/03/1 dtd. 07.04.2004

(4) In addition to the pay specified in sub-rule (1) and sub-rule (2), Member Secretary shall be entitled to,-

(a) A house rent allowance as are admissible to the pay scale of the Member Secretary under the Government:

Provided that where the Member Secretary is allotted an accommodation by the Government, he shall not be entitled to house rent allowance and shall be required to pay a licence fee as applicable for Government officials;

(b) The medical facilities as are admissible to officers of their status under Government of Assam.

(c) Other facilities like telephone, mobile phone, allotted vehicle, etc. as admissible to equivalent rank officers under the Government.

(5) In case, the Member Secretary has been appointed by taking an officer on deputation, the Board shall contribute towards leave contribution, pension contribution and any other such contributions prescribed to be made as per service condition of the person taken on deputation. His deputation to Board shall be considered as deputation to "Foreign Service".

(6) The other conditions of service of the Member Secretary in the matters of allowances, leave, joining time, joining time pay, provident fund, gratuity, age of superannuation and other conditions of service shall be regulated in accordance with such rules and regulations of the Government as are for the time

being applicable to officers belonging to the corresponding pay scale stationed at those places.

(7) The upper age until which a person can hold the post of Member Secretary is 60 (sixty) years.

(8) The Member Secretary serving in the Board on deputation and retiring from their respective service while serving in the Board on attaining the age of superannuation, shall draw their retirement benefits like Gratuity, pension, leave encashment, etc. from their parent department or organisation.

(9) The Member Secretary shall be entitled to travelling allowance and daily allowance, in respect of journeys undertaken by him in connection with their duties, at the rates permissible in the case of Senior Grade Officers under the Government.

(10) The tenure of the Member Secretary in the Board shall be for a term of 3 Years from the date of his appointment by the Government of Assam, provided that he shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. In situations like the Government being not in position to appoint a new incumbent as Member Secretary before the expiry of the term of the Member Secretary, or Member Secretary falling suddenly ill or proceeding on leave for a period exceeding 10 (ten) days, the Senior-most Secretary to the Government in Environment and Forest Department shall assume the duties of the Member Secretary suo-moto, till such time, but not exceeding three months, the incumbent Member Secretary returns or a new Member Secretary is appointed.

The term of office of the Member Secretary should not be extended for more than one term. Such persons should not hold office in the Board in accordance to their tenure in State Government.

(11) Government shall not remove the Member Secretary of the Board before expiry of his term of office without giving him a reasonable opportunity of show-cause against him, which shall ordinarily be 15 days.

(12) During the leave or expiry of tenure of Member Secretary, the Chairman of the Board shall make

alternative arrangement for a period not exceeding six months or till the appointment of new Member Secretary by the Government, whichever is earlier.

(13) Disqualification - No person,-

(a) who has entered into or contracted a marriage with a person having a spouse living; or

(b) who having a spouse living has entered into or contracted a marriage with any person, shall be eligible for appointment to the said post :

Provided that the Government of Assam may, if satisfied that such marriage is permissible under personal law applicable to such person or the other party to the marriage and that there are other grounds for doing so, exempt any person from the operation of this rule

(14) Power to relax - Where the Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

C Appointment as Member –

(1) Only the following categories of Officials/ Non-Officials/ Experts/ Persons shall be eligible for nomination as Member as per clauses (b), (c), (d) and (e) of sub-section (2) of section 5 of the Act :-

(a) Government Officials not below the rank of Joint Secretary to the Government of Assam or equivalent as Government representatives from different Government Departments having concern to Pollution Control and Management.

(b) Persons, associated/working under local authorities functioning within the state as representative of local authorities.

(c) Experts in agriculture, fishery, industry, Education related to environment or any other field, which in the opinion of the Government is important for pollution control management as non-official member.

(d) Managing Directors of companies or corporations owned, controlled or managed by the Government.

(2) An officer working under the Central Government or a State Government or a public sector undertaking or a University or an autonomous body or statutory body selected for appointment as the Member shall be considered for appointment as Member on deputation basis only.

(3) The period of deputation including period of central deputation in another ex-cadre post held immediately proceeding this appointment in the same or some other organisation shall not ordinarily exceed three years.

(4) Age Limit – No age limit is fixed for Members representing the Government or local authorities or companies or corporations owned by the Government. The age limit for the non-official members shall be 65 (sixty-five) years.

(5) The Members of the Board shall not be eligible for any pay. They shall be given only sitting fee of rupees two thousand per meeting or as revised by the Board from time to time.

(6) The tenure of Members of the Board as representative of the Government, local authorities functioning within the State and companies or corporations owned, controlled or managed by the Government shall come to an end as soon as the Member ceases to hold the office under the Government or the corporation owned by the Government by virtue of which he was appointed.

(7) A Member of the Board shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board.

Amendment of rule 24

4. In the principal Rules, the rule 24 shall be deleted

AVINASH JOSHI,
Principal Secretary to the Government of Assam,
Environment and Forest Department.

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ITEM NO.9 Court 4 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONMT.PET.(C) No. 655/2020 in C.A. No. 1359/2017

AMITABH SRIVASTAVA Petitioner(s)

VERSUS

RAJENDRA KUMAR TIWARI AND ORS. & ORS. Respondent(s)

(FOR ADMISSION)

Date : 08-02-2021 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Fuzail Ahmad Ayyubi, Aor
Mr. Ibad Mushtaq, Adv.
Ms. Ashima Mandla Adv.
Ms. Akanksha Rai, Adv.

For Respondent(s) Mr. V.K. Shukla, Senior advocate
Mr. Rajeev Kumar Dubey, Advocate
Mr. Kamlendra Mishra, Aor

Mr. Mahfooz Ahsan Nazki, AOR
Mr. Vijay Kumar G. SRKR, Secretary to
Government EFS&T Department, Andhra Pradesh
Mr. Polanki Gowtham, Advocate
Mr. Shaik Mohamad Haneef, Advocate
Mr. T. Vijaya Bhaskar Reddy, Advocate
Mr. Amitabh Sinha, Advocate
Mr. Shrey Sharma, Advocate

Mr. Abhimanyu Tewari, AOR

Mr. Debojit Borkakati, AOR

Mr. Samir Ali Khan, AOR

Mr. Sumeer Sodhi, AOR
Ms. Shreya Nair, Adv.

Mr. Aniruddha P. Mayee, AOR

Mr. Ankit Goel, Aor
Mr. R.K. Gupta, Adv,

Mr. Abhinav Kaushik,Adv.

Mr. Abhinav Mukerji, AAG (AOR)
Mrs. Bihu Sharma, Adv.
Ms. Pratishtha Vij, Adv.

Mr Tapesh Kumar Singh, AAG
Ms Pallavi Langar, AoR
Mr Kumar Anurag Singh Adv

Mr. V. N. Raghupathy, AOR

Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash,Adv.
Mr. G. Prakash, AOR

Mr.Saurabh Mishra, AAG
Mr. Arjun Garg, AOR
Mr. Sandeep Sharma Adv.
Ms. Shrutika Garg, Adv.

Mr. Sachin Patil, AOR
Mr. Rahul Chitnis Adv.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph Adv.

Mr. Siddhesh Kotwal, Adv.
Mr. Divyansh Tiwari, Adv.
Ms. Ana Upadhyay, Adv.
Ms. Manya Hasija, Adv.
Mr. Nirnimesh Dube, AOR

Ms. K. Enatoli Sema, Aor
Mr. Amit Kumar Singh, Adv

Mr. Som Raj Choudhury, AOR

Ms. Uttara Babbar, AOR
Mr. Manan Bansal, Advocate.

Dr. Manish Singhvi, Senior Advocate
Mr. Sandeep Kumar Jha, Aor

Mr. Sameer Abhyankar, AOR
Mr. Amish Tandon, Adv;
Mr. Ayush Bootra, Adv.
Mr. Varun Tandon, Adv.
Mr. Dipin Tamang, Adv.

Mr.Jayanth Muth Raj, Sr.Adv, AAG
Mr.M.Yogesh Kanna, AOR
Mr.RajaRajeshwaran. S, Adv
Mr. Aditya Chadha, Adv

Mr.Uma Prasuna Bachu, Adv

Mr. M. Yogesh Kanna, AOR

Mr.P. Venkat Reddy, Adv.
Mr.Prashant Tyagi, Adv.
Mr.P. Srinivas Reddy, Adv..
M/S. Venkat Palwai Law Associates, AOR

Mr. Shuvodeep Roy, AOR
Mr. Rahul Raj Mishra, Adv.
MR. RAHUL RAJ MISHRA, ADV

Ms. Vanshaja Shukla, Aor
Ms. Anuja Pethia, Adv.

Mr. Pukhrambam Ramesh Kumar, Adv(Manipur)
Ms. Anupama Ng., Adv.
Mr. Karun Sharma, Adv

Mr.Arun R. Pedneker, Adv.
Standing Counsel for State of Goa
Ms.Mukti Chowdhary AOR

Mr.Amit Kumar, Advocate General Meghalaya
Mr Avijit Mani Tripathi, AoR, Standing Counsel, Meghalaya
Mr.Shaurya Sahay, Advocate
Mr.T.K. Nayak Advocate

Mr. Som Raj Choudhury, Aor for State of Odisha.

Mr.Abhimanyu Tewari,AOR
Ms.Eliza Bar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The present contempt petition seeks enforcement of directions issued by this Court in its judgment dated 22.09.2017 in Civil Appeal No.1359/2017

Heard Mr. Fuzail Ahmad Ayyubi, learned advocate for the contempt petitioner. It is submitted by Mr. Ayyubi that following States have filed affidavits and have complied with the direction issued by this Court:

1.Himachal Pradesh(R-10)
2.Karnataka(R-12)
3.Madhya Pradesh(R-14)
4.Nagaland(R-19)
5.Odisha(R-20)
6.Punjab(R21)
7.Sikkim(R-23)
8.Tamil Nadu(R-24)
9.Tripura(R-26)
10.Uttarakhand (R-27)
11.Kerala (R-13)
12.Arunachal Pradesh(R-3)

Since the afore-stated States have complied with the directions, they stand discharged from this Contempt Petition.

It is also submitted that following nine States have filed affidavits but have not complied with the directions issued by this Court.

1.Uttar Pradesh(R-1)
2.Assam(R-4)
3.Chhattisgarh(R-6)
4.Jharkhand(R-11)
5.Maharashtra(R-15)
6.Manipur(R-16)
7.Mizoram(R-17)
8.Rajasthan(R-22)
9.Bihar (R-5)

It is submitted by the learned counsel appearing for State of Chhattisgarh (R-6) that the State has complied with the directions. However, according to Mr. Ayyubi, the compliance falls short of the directions issued by this Court. Learned counsel for State of Mizoram (R-17) has stated that the concerned Regulations have been framed but have not yet been implemented.

In the circumstances, States other than Chhattisgarh are given time of three months to frame regulations and effectuate the directions issued by this Court.

It is also submitted that the States of Telangana, Gujarat and

Haryana have filed the affidavits but Mr. Ayyubi has not been favoured with copies of the affidavits.

Similarly States of Andhra Pradesh, Meghalaya, West Bengal and Goa have also not filed any affidavits.

Mr. Tushar Mehta, learned SG submits that the appropriate affidavit on behalf of Goa State has been filed and the directions issued by this Court stand complied with.

List the matter on 10.05.2021 for further consideration.

(INDU MARWAH)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER

Supreme Court of India
Techi Tagi Tara vs Rajendra Singh Bhandari . on 22 September, 2017
Author: M B Lokur

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1359 OF 2017

Techi Tagi Tara

versus

Rajendra Singh Bhandari & Ors.

WITH

C.A. No. 1360/2017, C.A. No. 2481/2017 , C.A. No. 52
C.A. No. 1561/2017 , C.A. No. 4917/2017, C.A. No. 49
C.A. No. 5735/2017, C.A. Nos. 8377-8378/2017, C.A. N
10471/2017, C.A. No. 9498/2017 and C.A. Nos. 10472-
10473/2017

JUDGMENT

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 Signature Not Verified Digitally signed by of 2013.1 On a reading of the judgment and order passed by the NGT, it SANJAY KUMAR Date: 2017.09.22 12:31:35 IST Reason:

Rajendra Singh Bhandari v. State of Uttarakhand and others is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State Pollution Control Boards (for short SPCBs) did not have, according to the NGT, the necessary expertise or qualifications to be members or chairpersons of such high powered and 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 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, 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 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 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 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 life, and to have compassion for living creatures.2 It is quite clear that apart from the natural law obligation to protect and preserve the environment, there is also a constitutional obligation to do so.

Unfortunately, despite this, our society has been witnessing over the last 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 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, 19813 fall in this category but many of them possess only a few or sometimes none of the above attributes of good governance and again a few or none of them are adequately empowered. This is a serious problem haunting the SPCBs for at least two decades (if not more).

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:-
>
> (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:
>
> 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;
>
> Henceforth the Water Act and the Air Act
>
> (c) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;
>
> (d) such number of non-officials, not exceeding three, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;
>
> (e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;
>
> (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 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 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 September 26, 1997 D.O. No. PS/Secy (E&F)/CPCB/97 Dear The State Pollution Control Boards/Pollution Control Committees in Union Territories have been assigned an important role for prevention and control of pollution from different sources. In recent years, additional responsibilities have been assigned to them for enforcement of various statutes. Hence, these organizations need to be suitably strengthened so that they can cope up with the tasks. In fact, the Honble Supreme Court has also had occasion to observe on the unsatisfactory performance of State Boards in discharging their functions.

The activities of the Pollution Control Boards/Pollution Control Committees are essentially science and technology based. The Chairman and Member Secretaries are the key functionaries of the Boards/Committees who are expected to have requisites 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 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 these key positions and they are not frequently changed. Where the incumbents do not have the prescribed criteria they should be replaced.

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

With regards Yours sincerely, Sd/-

(Vishwanath Anand)

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 Jharkhand4 concerning the Chairperson of the SPCB of that (2002) 50 BLJR 2223 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 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 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 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 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 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 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 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 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, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

Research Foundation for Science v. Union of India

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.

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. 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.

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.

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.

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 Courts order dated 14.10.2003.

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.

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

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 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 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 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.

19. In view of the above, you are requested to inform this monitoring Committee regarding the qualifications of the Chairperson, Member Secretary and Members of the Pollution Control Board, Pollution Control Committee in your State/ Union Territory. Based on the information, the committee will examine whether the persons nominated to these positions meet the statutory norms and the requirements as indicated in the 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 Telefax: 011-24361410 Email: drgarajan @yahoo.co.in

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 Act6 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 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.

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

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.

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 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 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:
>
> 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 with Section 15 of the Act which relates to relief, compensation and restitution as being broadly the directions that can be issued by the NGT.

Section 15 of the Act reads as follows:

> 15. Relief, compensation and restitution. (1) The Tribunal may, by an order, provide,
>
> (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);
>
> (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 (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 five years from the date on which the cause for such compensation or relief first arose:

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

(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 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. 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,
>
> (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 (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;

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.

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 Department8 the following definition of dispute was noted in paragraphs 34 and 35 of the Report:

(2015) 15 SCC 1 34. To understand the meaning of the word dispute, it would be appropriate to start with the grammatical or dictionary meaning of the term:

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. Blacks Law Dictionary, 5th Edn., p. 424 defines dispute as under:

Dispute.A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.

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 appointments that we are concerned with are not disputes as such or even disputes for the purposes of the Act they could be disputes for a constitutional court to resolve through a writ of quo warranto, but certainly not for the NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which the NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like the NGT. While we appreciate the anxiety of the NGT to preserve and protect the environment as a part of its statutory functions, we cannot extend these concepts to the extent of enabling the NGT to consider who should be appointed as a Chairperson or a member of any SPCB or who should not be so appointed.

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 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 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 Sabhlok9 in which it was observed with reference to appointments to the Public Service Commission that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute or the (2013) 5 SCC 1 Constitution and the statutory or constitutional authority cannot, in breach of such implied restrictions, exercise its discretionary power. In our opinion this would be equally applicable to an appointment to a statutory body such as the SPCB - the State Government does not have unlimited discretion 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 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 Service Commission. That it has failed to do so does not preclude this Court or any superior court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or Member of the Punjab Public Service Commission, does

> not imply that this Court cannot direct the executive to frame guidelines and set the parameters. This Court can certainly issue appropriate directions in this regard, and in the light of the experience gained over the last several decades coupled with the views expressed by the Law Commission, the Second Administrative Reform Commission and the views expressed by this Court from time to time, it is imperative for good governance and better administration to issue directions to the executive to frame appropriate guidelines and parameters based on the indicators mentioned by this Court.

These guidelines can and should be binding on the State of Punjab till the State Legislature exercises its power.

25. In Ashok Kumar Yadav v. State of Haryana10 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 Yadav11 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 (1985) 4 SCC 417 (2000) 4 SCC 309 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 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 implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary 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 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 proposed clean technology centre and (f) model environmental impact assessments be prepared for major categories of industries.

29. Finally, the Menon Committee13 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.

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

30. 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.

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

> 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 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 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 was clear violation of Water Pollution and Prevention Act, 1974.14 The names have been deliberately left out by us

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 couldnt-care-less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environment degradation and issues of pollution. Since the NGT was faced with this situation, we can appreciate its frustration at the scant regard for the law by some State Governments, but it is still necessary in such situations to exercise restraint as cautioned in State of U.P. v. Jeet S. Bisht.15

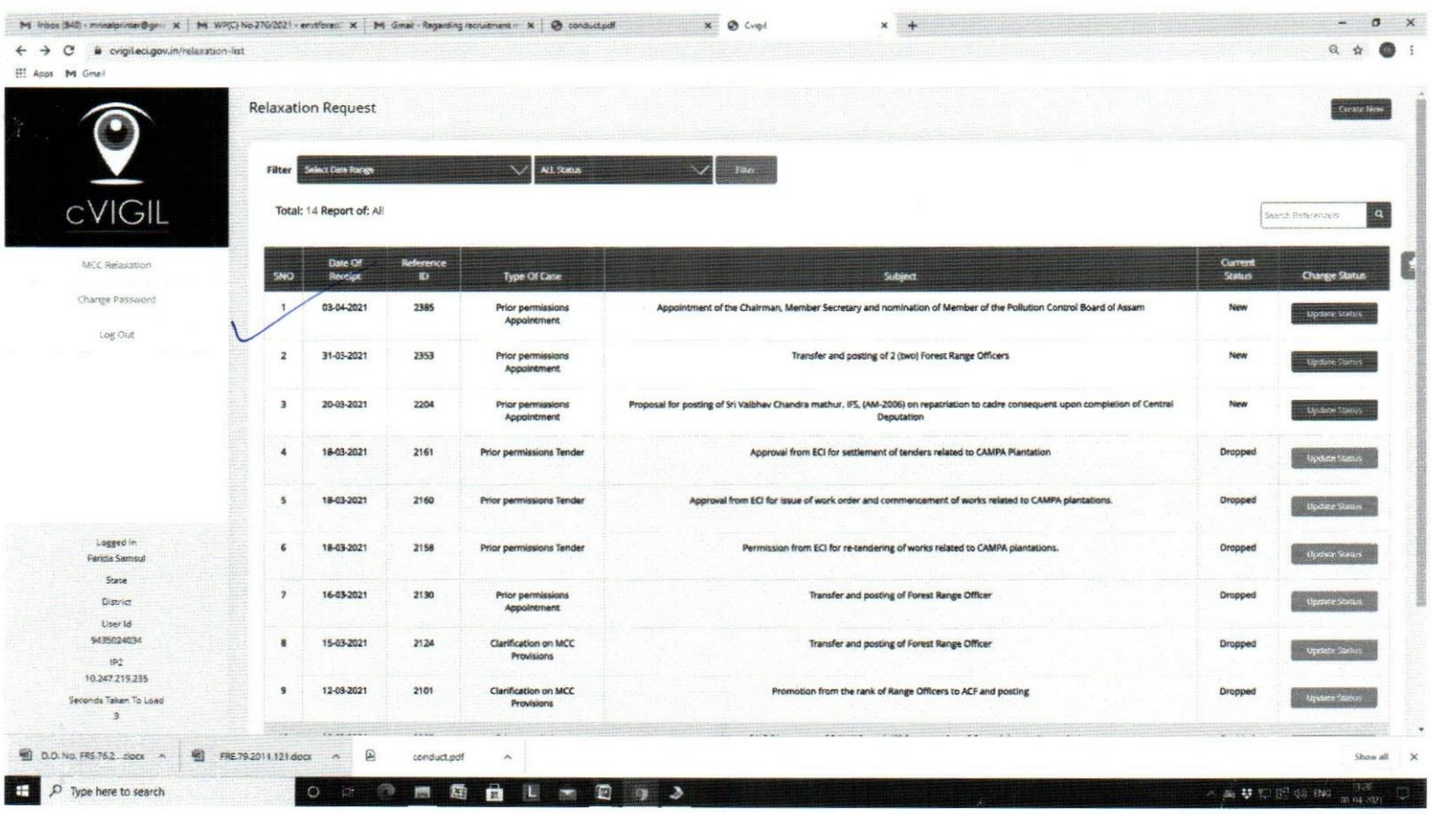
33. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs 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 (2007) 6 SCC 586 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.

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

.J (Madan B. Lokur) ..J (Deepak Gupta) New Delhi;

September 22, 2017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Total: 14 Report of: All
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1 03-04-2021 2385 Prior permissions Appointment Appointment of the Chairman, Member Secretary and nomination of Member of the Pollution Control Board of Assam New Update Status
2 31-03-2021 2353 Prior permissions Appointment Transfer and posting of 2 (two) Forest Range Officers New Update Status
3 20-03-2021 2204 Prior permissions Appointment Proposal for posting of Sri Vaibhav Chandra mathur, IFS, (AM-2006) on repatriation to cadre consequent upon completion of Central Deputation New Update Status
4 18-03-2021 2161 Prior permissions Tender Approval from ECI for settlement of tenders related to CAMPA Plantation Dropped Update Status
5 18-03-2021 2160 Prior permissions Tender Approval from ECI for issue of work order and commencement of works related to CAMPA plantations. Dropped Update Status
6 18-03-2021 2158 Prior permissions Tender Permission from ECI for re-tendering of works related to CAMPA plantations. Dropped Update Status
7 16-03-2021 2130 Prior permissions Appointment Transfer and posting of Forest Range Officer Dropped Update Status
8 15-03-2021 2124 Clarification on MCC Provisions Transfer and posting of Forest Range Officer Dropped Update Status
9 12-03-2021 2101 Clarification on MCC Provisions Promotion from the rank of Range Officers to ACF and posting Dropped Update Status
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MCC Relaxation Details

Back (/relaxation-list)

cVIGIL

Print

Case Status: New

Reference ID	2385
Date of Occurance Of Relaxation Request	03-04-2021
Type of case	Prior permissions Appointment
Name of Ministry	Environment and Forest department
Name of Department/Division	Environment and Forest department
Event Date	03-04-2021
Subject	Appointment of the Chairman, Member Secretary and nomination of Member of the Pollution Control Board of Assam

Gist of The Case	In compliance of the Hon'ble SCIs Order dated 08.02.201 passed in CONMT.PET.(C) No.655/2020 in C.A.No.1359/2017 and the Hon'ble SCIs Judgement dated 22.09.2017 in CA No.1359 of 2017, the Water (Prevention & Control of Pollution) (Assam) Rules, 1977 and Air (Prevention & Control of Pollution) (Assam) Rules, 1991 were amended and notified. The same were published in the Assam Gazette on 25.02.2021 vide No.ENG.1/2017/331 and ENG.1/2017/332 so that the Chairman & Member Secretary of the PCBA can be appointed and Member of the PCBA can be nominated as per the Hon'ble SCIs Order dated 08.02.2021 within three months.
Gist of Relaxation Sought	In compliance of the Hon'ble SCIs Order dated 08.02.2021 rules have already been framed. But to effectuate the directions of the Hon'ble SCI, some procedure i.e. publishing of Advertisement, holding of interview are required for the appointment of the Chairman, Member Secretary and nomination of Member of the Pollution Control Board of Assam.
Reason For Seeking Relaxation	As the MCC is in force in the State of Assam, the concurrence of the CEO/ECI is required to initiate the process of appointment of the Chairman, Member Secretary and nomination of Members of the Pollution Control Board of Assam as per amended Rules.
Public Interest	Relaxation sought in the interest of public service and compliance of Hon'ble Supreme Court of India's Order.
Urgency Of Matter	To comply with order of Hon'ble Supreme Court.
Download Covering Letter	Download PDF (https://cvigil.eci.gov.in/uploads/relaxation/955540/955540

GOVERNMENT OF ASSAM
EVIRONMENT & FOREST DEPARTMENT
DISPUR, GUWAHATI-6.

No.ENG.1/2017/(Vol)/333 Dated Dispur the 19th April, 2021

From : Sri Indreswar Kalita, ACS
Addl. Secretary to the Govt. of Assam,
Environment and Forest Department,

To :
1. The Commissioner & Secretary to the Govt. of Assam
Finance Department.
2. The Commissioner & Secretary to the Govt. of Assam
Legislative Department.
3. The Commissioner & Secretary to the Govt. of Assam
Judicial Department.
4. The Secretary to the Govt. of Assam
Personnel Department.
5. The Secretary to the Govt. of Assam
Science & Technology Department.
6. The Joint Secretary to the Govt. of Assam
Political (Cabinet Cell) Department.
7. The Staff Officer to Chief Secretary, Assam.
8. The Member Secretary (i/c), Pollution Control Board, Assam,
Bamunimaidam, Guwahati-21.

Sub : Gazette Notification:
1. Water (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021.
2. Air (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021.

Sir,

With reference to the subject cited above, I am directed to forward herewith 2 (two) copies of Gazette Notification No.ENG.1/2017/331 dated 25.2.2021 and No.ENG.1/2017/332 dated 25.2.2021 regarding Water (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021 and Air (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021 respectively for favour of your kind information and reference.

Enclo: As stated above.

Yours faithfully,

Addl. Secretary to the Govt. of Assam,
Environment and Forest Department.

Memo No. ENG.1/2017/(Vol)/333-A Dated Dispur, the 19th April, 2021

Copy forwarded to :-

1. P.S. to Principal Secretary to the Govt. of Assam, Environment and Forest Department, Dispur-06.
2. P.S. to Commissioner &Secretary to the Govt. of Assam, Environment and Forest Department, Dispur-6.

o/c

Addl. Secretary to the Govt. of Assam,
Environment and Forest Department.

Draft

GOVERNMENT OF ASSAM
EVIRONMENT & FOREST DEPARTMENT
DISPUR, GUWAHATI-6.

No.ENG.1/2017/(Vol)/333 Dated Dispur the 12th April, 2021

From : Sri Indreswar Kalita, ACS
Addl. Secretary to the Govt. of Assam,
Environment and Forest Department,

To :
1. The Commissioner & Secretary to the Govt. of Assam
Finance Department.
2. The Commissioner & Secretary to the Govt. of Assam
Legislative Department.
3. The Commissioner & Secretary to the Govt. of Assam
Judicial Department.
4. The Secretary to the Govt. of Assam
Personnel Department.
5. The Secretary to the Govt. of Assam
Science & Technology Department.
6. The Joint Secretary to the Govt. of Assam
Political (Cabinet Cell) Department.
7. The Staff Officer to Chief Secretary, Assam.
8. The Member Secretary (i/c), Pollution Control Board, Assam,
Bamunimaidam, Guwahati-21.

Sub : Gazette Notification:
1. Water (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021.
2. Air (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021.

Sir,

With reference to the subject cited above, I am directed to forward herewith 2 (two) copies of Gazette Notification No.ENG.1/2017/331 dated 25.2.2021 and No.ENG.1/2017/332 dated 25.2.2021 regarding Water (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021 and Air (Prevention and Control of Pollution) Assam (Amendment) Rules, 2021 respectively for favour of your kind information and reference.

Enclo: As stated above.

Yours faithfully,

Addl. Secretary to the Govt. of Assam,
Environment and Forest Department.

Memo No. ENG.1/2017/(Vol)/333-A Dated Dispur, the 12th April, 2021

Copy forwarded to :-
1. P.S. to Principal Secretary to the Govt. of Assam, Environment and Forest Department, Dispur-06.
2. P.S. to Commissioner &Secretary to the Govt. of Assam, Environment and Forest Department, Dispur-6.

Addl. Secretary to the Govt. of Assam,
Environment and Forest Department.

By E-Mail/Camp Bag

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No.437/ECI/LET/TERR/NE2-AS/2021 Dated: 26th April, 2021

To

The Chief Electoral Officer,
Assam,
Dispur.

Subject: General Election to Legislative Assembly of Assam, 2021-Appointment of the Chairman, Member Secretary and nomination of Member of the Pollution Control Board of Assam-regarding.

Sir,

I am directed to refer to Reference ID No. 2385 uploaded on cVIGIL on the subject cited and to state that the Commission has approved the proposals of the Environment and Forest Department, Govt. of Assam as contained therein from MCC angle.

2. The concerned Department/authorities should be informed accordingly.

Yours faithfully

(LOVE KUSH YADAV)
UNDER SECRETARY