

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

**Original Application No. 318 of 2013**

**In the matter of:**

1. Rajendra Singh Bhandari,  
S/o Late Sri Kunwar Singh Bhandari,  
R/o Village and Post Office Tapowan,  
Tehsil-Narendra Nagar,  
District Tehri Garhwal,  
Uttarakhand-24920.

..... Applicant

Versus

1. State of Uttarakhand,  
Through the Chief Secretary,  
Government of Uttarakhand,  
Subhash Road,  
Dehradun,  
Uttarakhand, 248001.
2. Principal Secretary,  
Forest and Environment,  
Government of Uttarakhand,  
Secretariat, Subhash Road,  
Dehradun, Uttarakhand, 248001.
3. Chairman,  
Uttarakhand Environment Protection  
And Pollution Control Board,  
Secretariat, Subhash Road,  
Dehradun, Uttarakhand, 248001
4. Chairman,  
State Environment Impact Assessment  
Authority of Uttarakhand,  
Ajabpur Kalan,

Mathorawala Road  
Dehradun,  
Uttarakhand-248001.

5. Member Secretary,  
Uttarakhand Environment Protection  
And Pollution Control Board,  
115-E Nehru Colony,  
Dehradun, Uttarakhand – 248001.

6. Union of India,  
Through Secretary, Environment and Forest,  
Government of India,  
Paryavaran Bhawan,  
Lodhi Road,  
New Delhi.

.....Respondents

**COUNSEL FOR APPELLANT:**

Mr. Aniruddh Joshi, Mr. Neeraj Jain and  
Mr. Lav Kumar Agrawal, Advocates for Applicant

**COUNSEL FOR RESPONDENTS:**

Mr. D. Bharathi Reddy, Advocates for Respondent No. 1 and 2  
Mr. M.R. Shamshad, AOR and Ms. Soumya Kumar  
Ms. Harshita Deshwai, for State of U.P.

Mr. P.N. Mishra, Sr. Adv. and Mr. Mukesh Verma, Advocate  
for Govt. of Maharashtra

Ms. Alpanna Poddar, Adv. with Mr. Bhupender  
Kumar, LA for CPCB,

Mr. Vikas Malhotra, Adv. for MoEF

Mr. Ranjan Mukherjee, Mr. Upendra Misra and

Ms. Aprajita Mukherjee, Advs. for State of Meghalaya,

Mr. Gaurav Bhatia, AAG and Mr. Utkarsh Jaiswal, Advs. for  
UPPCB

Mr. Suryanarayan Singh, AAG for State of HP

Mr. Karanveer, Mr. Ravi Kant Pal and Mr. Pragyan Sharma,  
Advs. for State of Mizoram

Mr. Gurinderjit, Adv. and Mr. Amrik Singh, SLO for PPCB,  
Mr. C.D. Singh and Mr. Sandeepan Pathak, Advs. for State of  
Chattisgarh,

Ms. Aruna Mathur, Mr. Avneesh Arputham, Mr. Yusuf Khan,  
and Ms. Anuradha Arputham, Advs. for State of Sikkim,

Mr. K. Enatoli Sama, Adv. for State of Nagaland,

Mr. Sarthak Chaturvedi, Mr. Rohit Pandey, and Mr. D.N. Tripathi, Advs. for UT Chandigarh and for UT of Andaman & Nicobar Administration,  
Mr. P. Venkat Reddy and Mr. Prashant Tyagi, Advs. for the State of Telangana,  
Mr. Shubham Bhalla, Adv. for Chandigarh,  
Mr. Anil Grover, AAG with Mr. Rahul Khurana, Advs. for State of Haryana & HSPCB  
Mr. Sanjay Upadhyay, Mr. Salik Shafique, Ms. Divya Sharma, and Ms. Eisha Krishn, Advs. for State of Rajasthan (RSPCB)  
Ms. Priyanka Sinha and Ms. Anu Tyagi, Advs. for State of Jharkhand  
Mr. Som Raj Choudhary, Adv. for State of Odisha  
Mr. V.K. Shukla, Adv. for State of MP  
Mr. Rajul Shrivastava, Adv. for MPPCB  
Mr. G.M. Kawoosa and Ms. Antima Bazaz, Adv. for State of J&K and J&K PCB  
Mr. Devraj Ashok, Adv. for State of Karnataka  
Ms. Vinakshi Kadar and Ms. Hemantika Wahi, Advs. for State of Gujarat & GSPCB  
Mr. Sapam Biswajit Meitei, Ms. Kalyani and Mr. S. Vijayanand Sharma, Advs. for State of Manipur  
Mr. Gopal Singh, Mr. Rituraj, Ms. Shreyas Jain and Mr. Aditya Raina, Advs. for State of Tripura  
Dr. Abhishek Atrey, Mr. Sumit Razora, Advs. for UT of Lakshadweep  
Mr. Jogy Scaria and Ms. Beena Victor, Advs. for State of Kerala  
Ms. Deepika Ghatwar and Ms. Kankana Arandhare, Advs. for State of Assam  
Mr. Atmaram N.S. Nadkarni, AG of Goa, Mr. Santosh S. Rebello, Mr. Anuj, Mr. Anshuman Shrivastava, Mr. Keene Sardinha, Mr. Dattaprasad Lawande, Mr. Aman Shukla, and Mr. Debarshi Bhuyan, Advs.  
Mr. Anil Shrivastava, Mr. Sanyam Saxena, and Mr. Pranav Rishi, Advs. for State of Anunachal Pradesh and APPCB  
Mr. Guntur Prabhakar and Mr. Guntur Pramod Kumar, Advs. for State of AP  
Mr. D.K. Thakur, Mr. Deepak Jain and Mr. Alok Kumar, Advs. for UT of DD and DNH  
Mr. Rudreshwar Singh Mr. Gautam Singh, Advs for Bihar and State Pollution Control Board  
Mr. Joydeep Mazumdar and Ms. Parijat Sinha, for State of West Bengal  
Mr. R. Dutta and Mr. D. Bhattaacharya, Advs.  
Mr. Ravikant and Mr. Pragyan Sharma, Advs. for State of Mizoram  
Mr. Narender Pal Singh, Adv. for Govt. of NCT of Delhi  
Mr. Abhimanyu Garg and Ms. Gayatri, Advs. for Pudducherry  
Mr. A.K. Prasad and Mr. Panshul Chandra, Advs.

Mr. K. Venkataramani, Sr. Adv., AAG and Mr. R. Rakesh Sharma, Adv. for State of Tamil Nadu

Mr. Mukesh Verma, Adv for Repondent No. 4  
Mr. Aniruddh Joshi, Adv for Respondent No. 6

## **JUDGMENT**

### **PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)**

**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**

**Hon'ble Prof. A.R. Yousuf (Expert Member)**

**Hon'ble Mr. Bikram Singh Sajwan (Expert Member)**

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**Reserved on: 17<sup>th</sup> March, 2016**

**Pronounced on: 24<sup>th</sup> August, 2016**

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

### **RAGHUVENDRA S. RATHORE J. (JUDICIAL MEMBER)**

1. The core question which arises for consideration in this case is in respect of eligibility for appointment of Chairman/ Member Secretary of State Pollution Control Board. A related question is about the appointment of Members of the State Pollution Control Board.

2. By this application a challenge has been made to the constitution of State Pollution Control Board mainly on the

ground that person who do not qualify in terms of Section 4 of the Water (Prevention and Control) of Pollution Act, 1974 and Section 5 of the Air (Prevention and Control) of Pollution Act, 1981 are being appointed as Chairman/Member Secretary of the Board.

3. Initially, the Applicant had approached the High Court of Uttarakhand at Nainital through a Writ Petition (PIL 136/2013). The Hon'ble High Court had directed that the Applicant may approach this Tribunal in view of the direction of the Hon'ble Supreme Court of India. Thereafter, the present Original Application had been filed before the Tribunal wherein the case of the Applicant is that the person manning the important posts of the State Pollution Control Board, which is to implement the provisions of the Acts mentioned above, are not eligible for the same as they are neither having any special knowledge nor practical experience in the field of environment protection and pollution control.

4. The State of Uttarakhand had come into existence as a separate State in the year 2000. It is a Hill State in the Himalayan region which has been carved out of Uttar Pradesh with a vision to evolve a hill oriented development, keeping in view the hardship of its people and eco-sensitivity of the area.

5. After formation of State of Uttarakhand the industrialisation had grown with fast pace but without considering the eco-sensitive nature of the State and Environmental laws. There had been violation of laws by the State

Government particularly after 2004 when Industrial areas developed in Haridwar and Pant Nagar. Unregulated industrialisation took place as a result of the industrial package which was given to the State by the Central Government, wherein various concessions in taxes and excise duties were awarded to the industries up to the year 2010.

6. The case of the applicant is that there is no infrastructure of professional and technical officer in the Environment department of the State Government and State Board. Manpower in the State Board is almost same as in 2000 and is highly insufficient and in-competent to cope up with thousands of industries and development centres which have now been established. There is no State Laboratory for analysis of samples of trade effluent, sewage or air emission which are in violation of the Water Act and Air Act. No Objection Certificates are being granted by the Board on the basis of reports received from unrecognised private laboratories.

7. Further his case is that rehabilitation and rebuilding of infrastructure in the State is being planned and executed by IAS/IFS officers having administrative/Forest background only. They are taking decision on Environment without having any experience in that field. The knowledge and practical experience of IFS officers in implementation of Forest Conservation/Wildlife Protect/Bio-diversity Act, which is only 10% of total Environment, cannot fulfil the requirement of professional knowledge and

expertise of environment as required under Water and Air protection Act and the Rules made thereunder.

8. The State of Uttarakhand had constituted “Uttaranchal Protection Board”, under Section 4 (1) of the Water Act 1974, vide notification dated 16th December, 2001 and thereafter reconstituted the same vide notification of 1st May, 2002. It was renamed as Uttarakhand Environment Protection and Pollution Control Board” (UEPPCB).

The Members of the State Pollution Control Board are as under:-

1. Principal Secretary, Forest and Environment Department - Chairman (Part time)
2. Principal Chief Conservator of Forest - Member
3. Addl. Secretary, Urban Development Department - Member
4. Addl. Secretary, Industrial Development Department - Member
5. Chief Engineer, Jal Nigam, Dehradun - Member
6. Mukhya Nagar Adhikari, Dehradun - Member
7. Mukhya Nagar Adhikari, Haridwar - Member
8. Vice Chairman, MDDA, Dehradun - Member
9. Administator, Nagar Palika, Kashipur - Member
10. Representative of Uttaranchal Chamber of Commerce - Member
11. Vice Chairman, Hardwar Development Authority - Member

9. Therefore, according to the applicant the State Government violated the provisions of Water Act, 1974 and Air Act, 1981 and the Principal Secretary, Forest and Environment, Government of Uttarakhand had illegally nominated himself as Chairman and 10 others, by their designation, as Members of the State Pollution Control Board. The appointment/nominations of

Chairman and Member Secretary should have been of the persons who were having special knowledge and practical experience in environment and that of other members as per the relevant provision. It should not have been on the basis of their designation, by virtue of service in the State Government.

10. The Applicant has also submitted that on the instructions of Supreme Court, Monitoring Committee of Ministry of Environment and Forest, Government of India had on 16.08.2005, issued guidelines to the Chief Secretary of the State/ Union Territories. The said directions/guidelines provided that;

“Chairman of State Pollution Board/Committee should be individual with a sense of vision and feeling for the future. They must have an understanding of the complexity of modern science and technical sense they will be dealing with highly technical issue. They must have an understanding of law. The Chairman would have to be fully involved in the task of environment construction and planning. Appointment of Chairman of Board should be on the full time basis”

11. It was also mentioned in the said directions/guidelines that the Chief Secretaries, Environment Secretaries, Politicians, MLAs, Literary persons and non-technical persons should not be appointed as Chairman of the State Board and it should be headed and staffed by technically competent professionals. Similarly, it provides for appointment of Member Secretary and nomination of other Members of the State Board. But the State



Government had completely failed to comply with the directions/guidelines. Since the time of its issuance in August, 2005, the State Government had been encroaching on the powers of the State Board and its functioning, whereas Under Section 4 (3) of Water Act and Section 5 (3) of the Air Act statutory autonomy is provided to the State Board. The State Board of Uttarakhand is financially self-sufficient and the State Government does not provide any Budget or grant to it, for the payment of salary to its officers and employees. Including for its day to day functioning. The State Board is meeting its expenses by collecting fees for issuance of No Objection Certificates under Water Act, Air Act and water cess from industries under the Water Cess Act, 1977.

12. The aforesaid notification issued on 1st May, 2002, reveals that the nominated members including Chairman do not have any fixed term and they are holding their offices in State Board, as per their term in State Government. On the contrary full time Member Secretary is normally getting three years tenure. But a Member Secretary in Uttarakhand Board is frequently nominated on part time basis and no Member Secretary had been allowed to complete his full term of 3 years. They have been appointed on deputation from different departments for a period of three years but sent back to their parent department before completion of the said period. Thereafter, the Secretary of Environment and Forests of the State takes over the charge as

part time Member Secretary. The State Government for ulterior motives, does not want any full time Member Secretary of State Board.

13. The nominations of part time Member Secretary is illegal and in violation of Water Act as well as Air Act. At that time the post of Chairman of the State Board was ex-officio who was an IAS officer having main charge of Principal Secretary, Environment and Forests Department, State of Uttarakhand. The Member Secretary was an IFS officer who had been transferred from Van Vikas Nigam to the State Board and was not appointed by an open Selection process, as required under Water and Air Act as well as the directions issued by the Committee of Ministry of Environment and Forest. Both the officers of the Board were misusing the powers of the post.

14. The Rules under Water and Air Act have not been notified in the State of Uttarakhand even after 13 years of its formation. They are carrying on with the Air Rules notified by Uttar Pradesh Government in the year 1984. The meeting of the State Board is required to be held once in 3 months. But till the filing of the Application, only 15 Board meetings were held within last 12 years, since the constitution of Board in 2001. In other words, there had been violation of Section 8 of the Water Act and Section 10 of the Air Act.

15. Though the specific challenge in the present case was to the constitution of the Board in State of Uttarakhand, it was also

argued before us that a number of other States/Union Territories have appointed similar persons, who do not possess the qualification and are not connected with the field of environment, as Chairman/Member Secretary. It was also submitted by the counsel for Ministry of Environment and Forest that the State Board is to abide by the instruction issued by the Ministry that qualified and experience persons in the field of Environment should only be appointed as Chairman/Member Secretary of the concerned Pollution Control Board.

16. Therefore, Ministry of Environment and Forest was directed to file a complete list of all the State Board and Union Territories, stating the name, designation, qualification and experience of the Chairman/Member Secretary of the respective State Board and Union Territories. The Tribunal had also directed that notices be issued to all other States and Union Territories so as to file their affidavits in relation to above matter. The affidavit was to be filed by the Secretary of Environment of each State. Communication of the order was sent to the Chief Secretaries of the respective States.

17. All the respondents have contested the Original Application, by way of filing their respective replies/affidavit.

**Counter affidavit have been filed on behalf Respondent No. 1 & 2 namely the State of Uttarakhand and its Department of Environment and Forest,** through the Principal Secretary wherein certain objections have been raised with regard

to maintainability of the Original Application, as being false, frivolous and without merit. It has been stated in the Counter that remedy is not available before the Tribunal under the provisions of the NGT, 2010 on the ground of jurisdiction and limitation. Further, it has been stated that the plea raised in this Application have, more or less, been dealt with by Hon'ble Supreme Court in SLP 6023/2016 which was latter on converted as **WP PIL 85/2008 CVC Negi Vs. State**, wherein the Hon'ble Court vide order dated 07.05.2005 had restrained the Board from granting NoC. The interim order was modified on 27.02.2007 in the manner that NoC may be granted in accordance with law, subject to decision of the SLP. Subsequently on 06.01.2010 the SLP/PIL had been dismissed by the Hon'ble Supreme Court without recording any finding adverse to the State Government and the State Board, which finalized its constitution as well as appointment of different posts. Therefore, it is said by respondents that the jurisdiction of this Tribunal cannot be invoked by way of present Original Application.

18. In respect of issuance of NoC to the Pharma Formulation Unit and other unit in Doon valley, it has been submitted that State Government had got a study conducted through Pant Nagar University and a report was received in the month of November 2007 which was considered by the Hon'ble Supreme Court and no illegality was found. Thus the same issue cannot be raised in the present Application.

It has also been stated that the calamities in Kedar Ghati and other Hilly Areas was within 6 months of filing of the present Application and issuance of NoC had no connection with it, as it was given in the remote areas where there was negligible percentage of industries. The said disaster was natural and it cannot be said to have taken place due to any of the man made acts.

19. While giving para-wise reply, the respondents have denied and have asked for strict proof about applicant being a social worker or a public spirited person. It is stated that the applicant has filed this application for the protection of vested interest of some unidentified persons or the applicant could be a stool pigeon acting on the directions of some business tycoons. It has been denied by the Respondents that they have been neglecting any of the provision of the Water Act or Air Act or Environment Protection Act or the rules made thereunder. The respondents have also denied that the persons manning the important posts, for the implementation of the provisions of the Act, are not competent or eligible or that they are lacking in requisite knowledge or practical experience in the field of Environment Protection and pollution control. It has also been stated that as Uttarakhand Pollution Control Board was constituted in the year 2002, raising of plea of eligibility after lapse of 11 years is not legally sustainable. Further it is stated that the contention with regard to the disaster in the month of

June 2013, as a result of geographical interference by human being in establishing industrial project, Hydro-Project etc. is not correct. Similar issue was pending for considered before the High Court of Uttarakhand (WP 72/2010) and the same came to be decided on 15.07.2011. Another Original Application is pending for consideration before this Tribunal. (Original Application 151/2013) Legal Aid Committee National Green Tribunal Bar Association V/s Union of India. The averment in the Application that there is no infrastructure of Environment regulator mechanism in the said area and the same has not been strengthened, has also been denied. As regards to lack of man power or incompetent persons to cope with large number of industries and development centres, the respondent State have denied the same. Further, the strengthening of staff structure is under active consideration of the State Government.

20. The respondents have also denied that IAS/IFS officers of administrative/forest background, do not have the knowledge or practical experience in the field of environment and in implementation of forest conservation/wildlife protection/Bio-diversity Acts. Further, that they do not fulfil the requirement of professional knowledge and expertises on environment as required under the Water/Air/Environment Protection Acts and the rules. As per notification dated 1st May, 2002 issued by the State Government, the Principal Secretary, Forest and Environment has been nominated as Chairman of the Board who

has ample knowledge and experience in administering institution dealing with matters of environment. The qualification of the present Member Secretary, who is a senior Indian Forest Service officer, is M.Sc in Soil Science and Agriculture Chemistry. Pollution Control and Environment Management had been part of the curriculum during the training in Forest Academy. He is having vast experience in management aspect of wildlife and environment. Therefore his is fully competent to hold the said post.

21. The nomination of Members is to be done by the State Government, amongst the persons representing the Government which are not to be exceeding five and nomination is also to be made from the Members of the local Authority which are also not to be exceeding five in number. Further, nomination is to be made by the State Government so as to represent the industries, agriculture, fisheries, trade etc, which are not to exceed 3. Two persons are to represent Companies or corporatives owned, controlled or managed by the State Government. The said nominations have been done by notifications dated 8th February, 2004. These nominations/appointments of the members in the Board is the prerogative of the State Government. These issues have already been considered by the Hon'ble Supreme Court, as mentioned herein and the same should not be looked into again by the Tribunal. The Hon'ble Supreme Court has also taken into consideration the guidelines dated 16/08/2005 issued by the

monitoring committee of MoEF, wherein no violation has been found. The allegation with regard to infringing the powers and functions of the State Board by the State Government, has also been denied. In response to the question of issuing notification of the Rules under Water and Air, it has been stated that the draft Rules have been submitted to the State Government for its consideration. It is said that the State Government is deeply concern for sustainable growth of industries, without any adverse effect on the ecology system and Environment.

22. It has been denied that the application is within period of limitation or that the cause of action is a continuing one. As the application alleges with regard to the period which is more than 6 months old to its filing, the same is barred by limitation. Accordingly it has been stated that the applicant has no cause of action against the respondent and the jurisdiction of this Tribunal cannot be invoked. The respondents have, therefore, stated that the applicant is not entitled for any of the relief from this Tribunal.

23. **An affidavit has also been filed by the Chief Secretary, Government of Uttarakhand, who is non-applicant No. 1** in the Original Application, giving details of the relief and compensation granted by the State of Uttarakhand to various people who had been the victims of the disaster and have made a mention of various orders issued by the State Government in respect of the families affected; the number of animals died;



damage to the houses and hotels etc. He has also deposed about the funds released and the amount disbursed.

24. **The applicant has filed a rejoinder affidavit to the reply filed by Respondents No. 1 and 2.** In the said affidavit applicant has specifically denied the preliminary objections raised by the Respondents in their counter and the facts mentioned therein. It has been deposed that the applicant is directly invoking the jurisdiction of the Tribunal as the issue raised in this application are mainly concerned with illegal constitution of the Pollution Control Board and issuance of NoCs. It is stated that State Pollution Control Board has not been constituted in the light of the directions/guidelines framed by the Hon'ble Supreme Court Monitoring Committee in 2005 and it still continues to function. Therefore it is a continuing cause of action and the application is not barred by limitation.

Further it is stated that the Hon'ble Supreme Court had not decided the aforesaid Writ Petition on merits and dismissed the same as the petitioner, there in, could not proceed due to his health. The issues raised in the writ petition were not adjudicated by the Court. The Hon'ble Supreme Court vide its order dated 8<sup>th</sup> January, 2008, directed the State of Uttarakhand and State Pollution Control Board to make Rules regarding essential qualification and experience for appointment of various official of the Board. But still no such Rules have been framed and the stand of the answering respondents had always been that they

are under consideration of the State Government. The said consideration is pending since the year 2006 and this shows the negligent attitude of the State.

25. It is stated that Hon'ble Supreme Court vide order dated 08.01.2008 directed that the said Writ Petition be heard along with SLP No. 6023 of 2006. But the SLP became in-fructuous and was dismissed on 7th August, 2009. Thereafter, the said Writ Petition was listed before another bench on 06.01.2000 and was dismissed due to the letter written by the petitioner. The dismissal of the Writ Petition did not answer the question raised therein.

It has also been stated in the rejoinder that the grant of NoCs by the Board is based on invalid report submitted by unrecognised authorities which is in violation of Section 21 of Water Act and Section 26 of the Air Act. The assessment was conducted much after the industries had established their plants/ factories and had started functioning. The State Pollution control Board had never started the State Laboratories for Air and Water. This is in clear violation of Section 52 of Water Act and Section 28 of the Air Act. The respondents, in para 7 of the counter affidavit, have admitted to have started process of constitution of Air and Water Laboratories, for which approval is still pending before the State Government. The applicant has reiterated that disaster of 2013 was a result of disturbances in the eco-balance of environment. The disaster was a consequence

of the environment degradation in Doon valley on account of unauthorised industrialisation and construction beyond the capacity of sustainability of the environment.

26. After denying the contents of Para 4 of the Reply, it is stated by the applicant that he is a law abiding citizen and self devoted person towards protection of nature and environment. He has done Masters in Ecology and was also a member of District Panchayat. Further it is stated that respondent are trying to escape from the responsibility by blaming the applicant and defaming him that there is vested interest of some unidentified lobbies or that applicant being a stool pigeon on the directions of the business houses. But this will not change the position that the respondents had acted illegally for their own benefit. The Supreme Court Monitoring committee had directed all the State Governments that the Chairman and Member of the State Pollution Control Board should have requisite knowledge and vast experience in the subject of Environmental Science but Government of Uttarakhand have appointed IAS/IFS officers and Secretaries of different Departments of the State, who might be good in administration but are incapable for environment protection and they are just filling the blanks. The respondents are denying the statement made in the application but are indirectly accepting the fact that for last 11 years officers are being appointed in violation of the law. Thus it is a continuing cause.

27. It has also been stated that the major cause of the disaster in June 2013 was environment imbalance which has to be taken care of by the State Government as well as State Pollution Control Board. But the same is not and cannot be complied with due to lack of practical experience in the field of environmental pollution control. As regards the other Original Application No. 151/2013 it is stated that the issues raised in the present case are different from it. The State Pollution Control Board is using its power/authority without considering the fact that illegal issuance of No Objection Certificates or permissions to the industries for establishing their projects or factories without considering the carrying capacity, study of the area and ignoring the fact that it would cause damage to the Environment and its component, would lead to the verge of extinction. So in the PIL petition (72/2010) filed in the High Court of Uttarakhand, at Nainital the Court passed an order in accordance to guidelines of 2011 but the same has not been followed by the Respondent authorities till date. Consequently, the natural calamities in Uttarakhand Region had taken place. It is stated that infrastructure of Environment Regulatory Mechanism (ERM) is not sufficient for the work to be executed, due to insufficient number of official and technical staff. The pictures and figures given by the respondents are misleading and do not make ERM sufficient and capable of functioning for the purpose of all, as the State of Uttarakhand is covered by 70% of forest area which

requires more technical staff than as per the figures given by respondents.

28. Further it has been replied by the applicant that currently State Board Chairperson Dr. Ranveer Singh is a senior IAS officer and holding a degree in MBBS, which does not make him competent enough or qualified to be an environmental expert, as required under Section 4(2)(a) of the Water Act and Section 5(2)(a) of the Air Act. He was also responsible, as he then was a part time Member Secretary of State Board, in issuing illegal NoC for orange category pharmaceutical units under green category and consent to operate such illegal pharmaceutical units are still being issued. The Member Secretary being a senior IFS Officer and trained in concerned Area during his training period at the Forest Academy, by itself do not become qualified as he does not have any experience in pollution control at the time of his nomination in the State Board, as required under Water Act and Air Act. The Chairperson of the State Board is being appointed by the Respondent State Government without following the directions of the Supreme Court Monitoring Committee or in the light of notification of MoEF, Government of India in the year 2005 wherein IFS/IAS officers have been clearly excluded from such post in the State Board. It is also pertinent to mention that all the officers were not appointed or being appointed by way of open selection, but are being nominated by virtue of their designation, in the State Government Department, ignoring the

actual qualification needed under law. Thus, it shows the negligent attitude of the respondents in respect of the rules and regulations. Officers, especially Member Secretaries are frequently appointed every year and nobody could finish his tenure i.e. 3 years.

29. It is further stated by the Applicant that Respondent has misinterpreted by saying that:-

“Water and Air rules of the hilly State could not be notified by the State Government”

Instead considering the same statement made in the application as:-

“These rules are to be notified by the State Government”

The respondents have already admitted that the Draft Rules and Service Rules under Air Act and Water Act for the appointment/nominations of Member Secretary and other Member of the State Pollution Control Board are still pending for consideration before the State Government. It has also been stated by the applicant, to the reply filed by the respondent, that the State Government violated the provisions, as given under Section 14(3) of the Air Act and Section 12(3) of the Water Act.

30. Mr. T. B. Singh was appointed by the Addl. Secretary of Forest and Environment, Government of Uttarakhand as Chief Environmental Officer, on Deputation from State Board of other State Government (Himachal Pradesh). The respondents are fully responsible for the illegal conduct of Mr. T. B. Singh as they had

chosen not to take any action against him even after the charges for issuing illegal NoCs and consent to operate.

Doon Valley Notification 1989 is not being followed by the respondents, as it essentially requires prior permission of MoEF, Central Government. The Report that has been referred to by the respondents in their counter affidavit is of no value in the eyes of law, as the university is not competent to conduct such assessment. There can be a situation where the State Government, for its own sake, makes the university to do such assessment and submit the report so that it can take the benefit of industrial package granted by Central Government. The industrial packages were granted in the year 2004 and the assessment report was submitted in November, 2007, whereas the assessment of carrying capacity of Doon valley and the eco-sensitive area, was supposed to be done before the establishment of the industries. The pharmaceutical industries which are being considered to be money bank for the State Government are unanimously taking benefit of amenities granted by the Government after Dehradun became temporary capital of Uttarakhand and subsequently agriculture lands were converted into industrial lands for the benefit of Industrialist of the State. The Land use was changed from agriculture to industrial and commercial in Doon Valley without prior approval of MoEF, as required under Doon Valley Notification 1989 which was issued under the Environment Protection Act, 1986. This has resulted in

unauthorised constructions in Doon Valley and the SPM level of the Capital of City of Dehradun is well beyond permissible limit.

31. The affidavit filed by the respondent in the matter of Legal Aid Committee National Green Tribunal Bar Association Vs Union of India & Ors does not clarify the position in relation to the contentions raised in the present application, regarding disaster management because there are several issues raised before the Tribunal which remains to be decided. The replies to the paras of original application on Environmental Report of Uttarakhand 2004 and Environment Policy have been deliberately ignored by the respondent State Government and the State Board. The present Application is moved with the prayer to stop the malpractices of State Government with regard to constitution of the State Board and appointment of Board officers as well as issuance of illegal NoCs by the State Pollution Control Board to the Industries in the Hill area of Uttarakhand.

**32. The State Pollution Control Board through its Chairman (Respondent No. 3) and Member Secretary (Respondent No. 5) have filed a joint reply** wherein they have contested the case of the applicant by denying the averments made in the original application. Apart from raising the question of limitation, respondent have submitted that the grounds raised in the application are, more or less, already dealt with by the Hon'ble Supreme Court of India (SLP 6023/2006) which was latter on converted into WP (PIL) 85/2008 CVS Negi Vs. State of



Uttarakhand. The Hon'ble Court had on 7th May, 2007 restrained the Board from granting NoC till the matter was finally heard. However, subsequently the said order was modified, on 27.07.2007, in the manner that NoC may be granted in accordance with law, subject to the decision of Special Leave Petition. The Hon'ble Supreme Court of India had looked into the matter on 07.08.2009 as well as 06.01.2010 and the SLP filed by Negi was dismissed without giving any finding against the State Government and the State Board. Therefore, according to the respondents, the aspects related to constitution of the Board and appointment of its officers bearers was finally settled which is binding on all, including tribunals. For this reason, it has been submitted by the respondents that the present application be dismissed with cost.

In respect of grant of NoC to the Pharama Formulation Unit and other unit in Doon Valley, there had been report of Pant Nagar University on technical study, in November, 2007, and the same had been considered by the Hon'ble Supreme Court and it did not find any illegality in them. In respect of calamities of Kedar Ghati and other hilly areas it is stated by the respondents that it had taken place within 6 months of filing of this application and as such NoC issued by the answering respondents cannot be said to have created such calamity. It is also stated that the answering respondents, had, time and again,

enhanced the technical staff in the Board as per requirement of Man Power.

33. The answering respondents have denied the fact with regard to the applicant being a social worker and a public spirited person. Further it is submitted that there can be a situation that the applicant has filed the above application for the protection of the vested interest of unidentified lobbies or acting on the direction of business houses. It has been denied that respondent authorities are neglecting the provisions of environmental protection law and Rules made therein. It has also been denied that persons manning the important posts are not competent or that they are not eligible or not having requisite knowledge and practical experience in the field of environment protection and pollution control.

34. It has been emphasised that reasons of disaster in Uttarakhand in June 2013, was a natural calamity. Respondents denied the same as being due to geological interference by human beings, in establishing industrial projects, Hydro Projects etc. and without following environmental law. A similar issue is also pending for consideration in Original Application No. 151/2013 Legal Aid Committee National Green Tribunal Bar Association Vs. Union of India. Further it is submitted that in WP (PIL) 72/2010 High Court of Uttarakhand had considered the environmental aspect in its Judgement dated 15.07.2011 and the same is being followed in the State.

It is denied that there is no infrastructure of Environmental Regulatory Mechanism or the same is not being strengthened. It is also denied that there is no infrastructure of Professional & Technical Officers in the environmental department of the State Board. The Respondents have denied that man power in the State is almost the same as of in the year 2000 which is highly insufficient and incompetent to cope with the industries and development centres. It is stated that Uttarakhand is a Small State with about 70% of area having been covered under forest. The State Board is having four regional offices. At the time of formation of the Board, there were only two. Similarly the strength of technical officers is 18 where as at the time of formation of the Board it was 7. Further, the strength of the staff structure of the Board is under consideration of the State Government. The State Board had purchased land for additional accommodation. There are two laboratories of the Board, duly certified, at Dehradun and Haldwani. As regard the central laboratory of the Board, for the purpose of infrastructure, respondents have purchased land and are going to construct building with proper space for its Head Quarters and Central Laboratories. It has been denied that illegal NoC has been issued by the Board to the polluting industries.. The Board had already started online management system for NoC, Consent and authorisation, under Law.

35. It is denied by the respondents that IAS/IFS officers of administration/forest background do not have any experience in the field of environment and their knowledge and practical experience in implementation of forest conservation/wildlife protection/ Bio-Diversity Act is only 10 percent of the total Environment. Further it is denied that they do not fulfil the requirement of professional knowledge and expertise on environment as required under the Water Act/Air Act/Environment Protection Act and rule made their under.

36. Further it is stated on behalf of pollution board that it is the prerogative of State Government to nominate/appoint officials of the Board. Since, all these aspects have been considered by the Hon'ble Supreme Court, the same should not be looked into again by the Tribunal. The Guidelines of the Hon'ble Supreme Court Monitoring Committee and MoEF dated 16.08.2005 were also considered by the Hon'ble Supreme Court and no violation was found. It is incorrect to say that there is any infringement of powers of State Board, by the State Government. Further it was denied that the Water and Air rules of the hilly State could not be notified by the State Government which is hampering the development. The rules and regulations of the recruitment of officers and employees of the State have been adopted and no difficulty is being faced by the State Board in this respect. It is stated that the State Board has already submitted the draft rules

under the Air and Water Act as also the service rules which are under consideration of the State Government, for notification.

**37. The Applicant has filed rejoinder to the reply of Respondents No. 3 and 5.** He denies all the averments of the Counter Affidavit which are contrary to what has been stated in the Application. The applicant has submitted that he has rightly invoked the jurisdiction of the Tribunal as the issues under challenge in the application are mainly concerned with illegal constitution of the State Pollution Control Board and illegal issuance of the NoC as well as consent to function industries and projects. It is also submitted that SLP (6023/2006) before the Hon'ble Supreme Court had not been decided on merits. The same was dismissed on the ground that the applicant contesting the application could not proceed on account of his inability, ill-health and lack of resources, which is clear from his letter.

38. The applicant has in his rejoinder also submitted that respondents are trying to mislead in these proceeding. On having come to know about the Writ Petition, the applicant inquired about the same. He was told that the same was dismissed as the applicant had written a letter on 31.12.09, through the Registrar of the Hon'ble Supreme Court, expressing his inability to contest the Writ Petition as he was not able to bear the cost of the proceedings on account of some personal issue. Therefore, the fact disputed in the Writ Petition still stands and had not been considered by any court. The Hon'ble Supreme Court vide its

order dated 08.01.2008 had asked the State of Uttarakhand and Environment Protection and Pollution Control Board to provide rule, governing essential qualification and experience as the same was relevant for appointment of various officers of the Board. But no such rules have been made available till date. The stand of the answering respondents has always been the same that “the rules are under consideration”. The said consideration is pending since 2006 which clearly indicates their negligent attitude.

39. The said Writ Petition was not at all decided on merit and the Hon’ble Supreme Court did not address the issues involved in the Writ Petition. The Hon’ble Supreme Court, vide order dated 08.01.2008 directed that the Writ Petition be heard along with the Special Leave Petition. But the SLP had become infructuous and was dismissed on 07.08.2009. Thereafter, the Writ Petition was listed before another bench on 6th January, 2010, and it was dismissed due to the letter written by the Petitioner. Therefore, according to the applicant mere dismissal of the petition by the Hon’ble Supreme Court did not give the State Pollution Control Board a clean chit and the issues raised therein remained unanswered. Therefore the Jurisdiction of the Tribunal has been rightly invoked as there are illegalities in constitution of the State Board.

40. Further it is submitted that State Pollution Control Board is functioning and issuing NoC, as well as Consent to the industries especially pharmaceutical company which are not fit

for eco-sensitive areas and are established in violation of Doon Valley Notification 1989. It is submitted by the applicant, in reply to the counter filed by the Respondent that grant of NoC in Doon Valley are based on invalid reports submitted by unrecognised authority which is in violation of Section 26 of the Air Act. Further, it is stated that the assessment was conducted much after establishment and functioning of the industry. The State Board had never started its full functioning. The State Board Air and Water laboratories were also not functioning properly and in clear violation of Section 28 of the Air Act and Section 52 of the Water Act. In fact the respondents in their counter affidavit have themselves mentioned that the process for construction of Air and Water laboratories is pending before the State Government for its approval.

41. It is submitted that June 2013, disaster in Uttarakhand was a result of disturbance in eco-balance of environment. It has been scientifically defined that Environment comes with all its components and if any part of it is destroyed by any means particularly unnatural or physical means, the whole balance gets disturbed. The happening in Kedar Ghati was a clear consequence of environment degradation in Doon Valley and other similar areas on account of unauthorised industrialisation and constructions beyond the capacity and sustainability of the existing environmental. The respondents have given false; vague information and are misleading the Tribunal by stating that they

have extended the technical and scientific Staff up to 70 % of the forest area, which also is not enough to sustain functionality of the Pollution Control Board, over such a large area.

42. The applicant has submitted that he is a dedicated person for protection of nature and environment. The respondents are trying to escape from their responsibility by blaming and defaming him, that he has a vested interest. The respondent authorities are neglecting the provisions of the Water and Air Act by appointing officers and staff in the State Pollution Control Board without following the law or direction given by the Hon'ble Supreme Court and its monitoring committee constituted on 14.10.2005. The Chairperson and Member of the Pollution Control Board are not having special knowledge and vast experience in the subject of environmental science. But even then the Government of Uttarakhand appointed officers and Secretaries of different departments of the State who may be good in administration but are incapable of dealing, in so far as environmental protection is concerned. The respondents are denying the statement made in the application but have indirectly accepted the fact that for last 11 years it has been appointing officers in violation of the laws.

43. It has also been submitted that State Pollution Control Board has been using its power and authority in Uttarakhand without considering the fact that illegal issuance of NoC or permission granted to the industries to establish their project and



factories, ignoring the fact that harm would be caused to the environment and its component which would lead to verge of extinct. The respondents have also not followed the guidelines issued by the High Court of Uttarakhand in the year 2011. Since the year 2004 the respondents are continuously violating the environmental laws especially the provision of Air Act and Water Act. The State Pollution Control Board has been constituted in violation of Water and Air Act and the guidelines of the Hon'ble Supreme Court and it is still so functioning. Therefore, there is continuous cause of action and there is no delay in filing of this application. The infrastructure of Environmental Regulatory Mechanism is insufficient to work due to inadequate number of officer and technical staff. The State of Uttarakhand is covered by 70% of the Forest area which requires more technical staff.

44. Since the first meeting of the State Board on 27.07.2002, almost 11 years have passed and they have only two laboratories of their own. The respondent Authorities have not clarified as to which of them a matter is to be referred for the assessment of impact on environment in the area. The concerned NoC is being issued by completely ignoring the rules and guidelines for the same. It is also submitted that the Chairman of the current State Board Shri Ranveer Singh is an IAS officer and is holding a degree of MBBS which does not make him qualified to be an environmental expert under the relevant law. It was during his time, as part time Member Secretary of the Board, that NoCs

were issued and consent to operate pharmaceutical units were given. The Member Secretary Mr. Vinod Singhal, IFS Officer, did not qualify because he had no experience in pollution control at the time of his taking over the post. Officers are not being appointed by way of open selection process but by virtue of their designation in the State Government Department and ignoring the qualifications needed under the relevant law. The Constitution of the State Board has been done twice and on both the occasions the State Government of Uttarakhand had not followed the rules and regulations as the Principal Secretary of Department of Forest and Environment of the State Government had selected himself as Chairperson and 10 other Members, with no full time Member Secretary.

This was on the whims and fancies of the State Government by ignoring/infringing the powers of the State Pollution Control Board, where as it is independent and autonomous with regard to the appointments of its officers. The officers, especially Member Secretaries are frequently appointed on yearly basis and nobody had completed the tenure of three years.

45. The respondents are not following the Doon Valley Notification 1984 which essentially requires prior permission of MoEF. The report, as referred to by the Respondents, has no value in the eyes of law as the university is not competent to conduct such assessment. It can be stated that the State Government, for its own sake, has made the university to do such

assessments and submit report so that it can take the benefit of Industrial package granted by the Central Government, in the year 2004 whereas assessment report was submitted in November, 2007. The assessment of carrying capacity of Doon Valley eco-sensitive was supposed to be done before the industry was established. The Pharmaceutical industries which are indeed considered to be money bank for the State Government are taking benefit of the amenities granted by the State Government after Dehradun became temporary capital of Uttarakhand and subsequently the agriculture land were illegally converted into industrial for the benefit of the Government. An affidavit filed by the respondents in the matter of Legal Aid Committee National Green Tribunal Bar Association and other does not clarify the position in relation to the contentions raised in the present application regarding disaster management because there are several other issues raised before the Tribunal which are to be decided. The reply to such paragraph of the Original Application has been deliberately ignored by the respondents. The present application has been moved to stop malpractices by the State Government with regard to constitution of the State Board as well as illegal issuance of NoC to the industries in the hilly areas, which is still continuing, and had never been stopped. Thus, there is no question of application being barred by limitation as the cause of action is still continuing, even after the order of the Supreme Court and the guidelines of the MoEF.

46. It has been stated that present application has been rightly moved by invoking the jurisdiction of the Tribunal in the light of Hon'ble Supreme Court Judgement dated 9th August, 2012 in the matter of Bhopal Gas Peedhit Mahila Udyog Sangthan Vs. Union of India wherein it has been held that every civil case which involves issues related to environment or any substantial right related to environment, shall stand transferred and be prosecuted/litigated before the National Green Tribunal. It is also stated that Section 14(1) of NGT Act gives the Tribunal wider jurisdiction and it is to decide the questions or issues related to implementation of enactments given under schedule 1 of the Act, 2010, i.e. Water Act, Air Act, Environment Protection Act, etc.

47. **State Environment Impact Assessment Authority, Respondent No. 4 has also filed a short reply** to the Application. It has submitted that the pharmaceutical industry had obtained environmental clearance after proper environmental appraisal by the then SEIAA. It is further submitted that State Environment Impact Assessment Authority, Uttarakhand has been headed by a retired IFS officers. He has the requisite knowledge to be appointed Chairperson of SEIAA as being an eminent forester and retired as Principal Chief Conservator of Forests. He also has the experience of working as a member of Forestry and Wildlife in the State Level Expert Appraisal Committee(SEAC) of Uttarakhand for a term of three years from

19th September, 2008. It is also stated that the Environmental Clearance have been issued by SEIAA in eco-sensitive areas of the State, river banks and hilly slopes with proper environmental appraisal required under EIA Notification 2006, as amended in the Year, 2009. The environmental clearance issued by SEIAA is based on appraisal report and recommendation of State Level Expert Appraisal Committee (SEAC) constituted under the Environment Protection Act, 1986. Further, it is stated that the allegation made by the Applicant are baseless. The Pharmaceutical industries were established with proper appraisal.

48. **A reply has been filed on behalf of MoEF, Respondent No. 6** through its Under Secretary. It has been stated in the reply that the implementation of the environment related Acts and Rules in States is the responsibility of the Environment Ministry/Department of the concerned State. The appointment on important posts such as Chairman or Member Secretary in the State Pollution Control Board comes under the administrative control of the respective State Government, therefore the aspect relating to eligibility, qualification, special knowledge and practical experience in the field of environment protection and pollution control in respect of the persons appointed to the crucial posts namely Chairperson and Member Secretary is to be taken care of by the State Government only.

It is submitted that the points raised with regard to economic activities and industrialisation in the State of Uttarakhand at the cost of environment protection are also required to be responded by the State Government. The issue regarding availability of professional and technical manpower in the State of Uttarakhand and also of high quality infrastructure required for the environment protection is the responsibility of the State Government. The role of Central Government is limited to reimbursement of 80% share of water cess to the State Pollution Control Board deposited by them in the consolidated fund of India. Under the relevant Act it is the onus of the State Government to constitute the State Pollution Control Board and ensure availability of adequate infrastructure such as laboratories, machinery and testing equipments etc. for smooth and efficient operation of State Pollution Control Board so as to achieve the objective of environment protection and pollution control in an efficient manner. The Central Government do not interfere in the domain of the State Government. It is also the responsibility of the State Government to comply with the direction/orders passed by the Courts and issues relating to pollution control and environment protection.

49. It has been submitted that reasons behind posting/transferring of officials on the posts of Chairperson or Member Secretary in a particular State Pollution Control Board are best known to the State Government concerned and the

Central Government has no role in this regard. The directions to the State Pollution Control Board are issued by the Central Pollution Control Board, whenever required and the Union of India do not administer these organisation. The concerned State Government are fully competent to take administrative decisions pertaining to service matter of their employees, as per the established rules and procedure. The Ministry do not interfere in their routine administrative and personnel related matters.

The subject matter of the present application comes under exclusive domain of the State Government of Uttarakhand. The applicant is aggrieved on account of alleged irregularities in selection and appointment to the post of Chairman and Member Secretary in the State Board of Uttarakhand and poor state of environment protection activities.

50. As during the course of hearing the Tribunal had directed to issue notices to other States and Union Territories and they were to file affidavit in relation to the subject in question that whether person appointed in State Pollution Control Board possesses the requisite qualification or not, that the respective States have filed their responses on record.

51. A Status Report has been filed by the Secretary, Dept. of Science, Technology and Environment, **State of Punjab** in a form of affidavit along with annexure giving the name of the person, description of membership, qualification and experience. The said information is as under:-

<b>Sl. No.</b>	<b>Name/designation of the Chairman and other Member of the Board</b>	<b>Description of the Membership</b>	<b>Qualification and Experience</b>
1.	Mr. S. Manpreet Singh Chhatwal, IAS Chairman, Punjab Pollution Control Board	Chairman Punjab Pollution Control Board, Patiala	B.Com., Associate Member of Chartered Accountants of India Joined Punjab Civil Service in the year 1992 as PCS Officer. Served in various capacities in the State and was elevated to IAS cadre in September, 2014. He has been allotted the batch of year 2006.

The Superintendent Department of Science, Technology and Environment, Government of Punjab had sent a letter on 19<sup>th</sup> March 2015 with reference to the order dated 19<sup>th</sup> February, 2015, passed by the Tribunal, giving requisite information. Shri Manpreet Singh, Chhatwal, IAS, Chairman, Punjab Pollution Control Board. His educational qualifications are B.Com, Associate Member of Chartered Accountants of India. He joined Punjab Civil Service in the Year 1992 and was elevated to IAS Cadre in September, 2014. He has been allotted the batch of year 2006. Dr. Babu Ram is the Member Secretary of the Punjab



Pollution Control Board. His educational qualifications are M.E. (Environmental Engineering) and Phd (Environmental Engineering).

52. Similarly an affidavit has been filed by Principal Secretary, Department of Environment of **Haryana-cum-Chairman of Haryana Pollution Control Board**. The information inter-alia with regard to experience and qualification are as under:-

<b>Sl. No.</b>	<b>Name</b>	<b>Designation</b>	<b>Qualification</b>	<b>Experience</b>
1.	Sh. Anurag Rastogi, IAS	Principal Secretary to Government of Haryana, Environment Department-cum-Chairman, HPCB	He has done Bachelor of engineering in Mechanical from erstwhile University of Roorkee (now I.I.T Roorkee)	He has served in Military Engineering Services before joining Indian Administrative Services in 1990. He has nearly 15 years experience in the field in the capacity of Sub Divisional Magistrate, Additional Deputy Commissioner and Deputy Commissioner. He has more than 10 years experience of work in Finance Department, Electronics and information Technology Department, Panchayat and Development Department,

				Education Department, Excise and Taxation Department and Town and Country Planning Department.
2.	Sh. Ajay Kadian, IFS	Member Secretary, HSPCB	B.E. (Civil Engineering)	(1) Conservator of Forest in Territorial Wing, Haryana Forest Department for 3 years. (2) Conservator of Forests in Production Wing, Haryana Forest Department for 3 years. (3) Divisional Forest Officer in Haryana State in different wings of Haryana Forest Department for 12 years. (4) Forest Expert in Rural Development Department, Haryana for 2 years. (5) Subject matter specialist in the World Bank aided Kandi Project, Agriculture Department, Haryana for 3 years.

53. On behalf of **Union Territory of Daman & Diu and Dadra & Nagar Haveli** an affidavit has been filed by the Member Secretary, Pollution Control Board. He has deposed that the

Secretary (Environment and Forest) of Union Territory Daman & Diu and Dadar & Nagar Haveli is the Chairman of Pollution Control Committee. He is a Post Graduate in Engineering from IIT Kanpur. He has a vast experience of dealing with the subject of Forest and Environment in the capacity of Secretary (Environment & Forest). He has experience in dealing with the subject of environment in Delhi Pollution Control Committee. The Conservator of Forest of Union Territory is the Member Secretary of the Board/Committee. He possess the Master Degree in Forestry and has experience in dealing the subject of Environment & Forests for last 15 years. He has undergone 3 years rigorous technical training in Indira Gandhi National Forest Academy, Dehradun. A diploma certificate issued after the said training is considered to be equivalent to M.Sc. (Forestry).

54. In respect of State Pollution Control Board of **Himachal Pradesh** an affidavit has been filed by the Additional Chief Secretary (Environmental Science and Technology) Government of Himachal Pradesh. A list received from the State Pollution Control Board stating name, designation, experience and qualification of the Chairman/Member Secretary/Non-Official Member have been annexed to the affidavit. The information with regard to the Chairman and Member Secretary of Himachal Pradesh State Pollution Control Board is as under:-

Sr · No ·	Name	Designation	Experience	Qualification
1.	Sh. Kuldeep singh Pathani a	Chairman	<ul style="list-style-type: none"> <li>➤ Practised law nearly about 15 years in various courts of law including Hon'ble Himachal Pradesh High Court, having a special interest in Environment in the Court of Law.</li> <li>➤ Remained member of H.P. Legislative Assembly also raised various issues regarding Environmental Protection more specifically the industrial pollution and degradation of the ecology.</li> <li>➤ Having a special knowledge &amp; Practical in respect of matters relating to the Environmental Protection and is having an association with various bodies working for Environment Protection in the State of Himachal Pradesh</li> <li>➤ While discharging duties as a elected</li> </ul>	<ul style="list-style-type: none"> <li>➤ B.Sc, H.P.U With Special knowledge of Plant Science &amp; Ecology.</li> <li>➤ L.L.B., University of Lucknow.</li> </ul>

			<p>representative (MLA) has taken care of environmental issues.</p> <ul style="list-style-type: none"> <li>➤ Having a vast experience in administrative matters and public issues</li> <li>➤ Having a special interest in Environment Protection issues.</li> <li>➤ Having a great concern in Ecology &amp; Plant Science</li> </ul>	
2.	Sh. Vineet Kumar, IFS	Member Secretary	<ul style="list-style-type: none"> <li>➤ During the Training of Indian Forest Service, w.e.f. May, 1985 to June 1987, Studied and had exposure of various aspects of Natural Resource Management, Forest Management, Wildlife Management, Biodiversity, Environment &amp; Ecology and Pollution related issue/subjects.</li> <li>➤ Undersigned served as Divisional Forest Officer and Conservator of Forests in various Divisions &amp; Circles in HP for almost 20 years. During this period,</li> </ul>	<ul style="list-style-type: none"> <li>➤ M.Sc., University of Allahabad</li> <li>➤ AIFC, Indian Forest College, (Now Indira Gandhi National Forest Academy) Dehradun.</li> </ul>

			<p>undersigned looked after normal Forestry operations, Wild life and Biodiversity Management aspect, which is one of the most vital and important activity for prevention of pollution and management of pollution in natural ecosystems.</p> <ul style="list-style-type: none"> <li>➤ Undersigned was also involved in study/ assessment of EIAs and EMPs submitted by various project proponents including Hydro Electric Projects.</li> <li>➤ The undersigned was also involved in implementation of Catchment Area Treatment Plans and relevant portion of Environment Management Plans of Various projects.</li> <li>➤ As Addl. PCCF (Soil), undersigned was involved in preparation and implementation of work plans for Soil and water Conservation in Himachal Pradesh, which is</li> </ul>
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			<p>again a vital aspect of overall environmental &amp; Ecological Management.</p> <p>➤ The undersigned has been posted as Member Secretary for the State Pollution Control Board w.e.f. July, 2013. During this period, I am involved in prevention control &amp; management of Environmental Pollution including Air &amp; Water pollution. Undersigned is also responsible for proper implementation of Provision of Water (Prevention &amp; Control of Pollution)Act, 1974, Air (Prevention &amp; Control of Pollution)Act, 1981, Environment (Protection) Act, 1986, Municipal Solid Waste (Management &amp; Handling) Rules, 2000, Bio-Medical Waste (Management &amp; Handling) Rules, 1998, Hazardous waste (Management, Handling and Transboundary</p>	
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			Movement) Rules, 2008 etc.	
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55. The Additional Residence Commissioner of the Union Territory, posted at New Delhi has filed an affidavit on behalf of **Union Territory of Lakshadweep**. The Pollution Control Committee of Union Territory of Lakshadweep was constituted vide Notification dated 23rd March, 2006. A letter dated 20th March, 2015 contained name, designation, experiences and qualification of Chairman, Member Secretary and Member of Pollution Control Committee of Union Territory of Lakshadweep was sent to MoEF and copy of the same has been annexed with the affidavit. Details in respect of Chairman and Member Secretary are as follows:-

<b>Sl. No.</b>	<b>Name and Designation</b>	<b>Experience</b>	<b>Qualification</b>
1.	<b>Chairman</b> Shri J. Ashok Kumar, IAS Secretary (Science & Technology)	Assistant Commissioner-Ut Chandigarh, Sub Collector Karaikal, Regional Administrator Mahe, District Collector Karaikal, District Collector & Secretary (S&T), UT Lakshadweep	B.Tech
2.	Member Secretary Shri Shubhankar Ghosh, DANICS Director, Science &	July 2013- January 2014- Director (S&T), Member Secretary, LPCC, Member Secretary, LCZMA March, 2014- January, 2015- Administrative	M.Sc (Immunology) M. Phil (Microbiology) PhD (ongoing)



	Technology	Officer, UT Administration Kochi February, 2015 onwards-Director (S&T), Member Secretary, LPCC, Member Secretary, LCZMA	
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56. In compliance of Order dated 19th February, 2015 passed by the Tribunal, the Principal Chief Conservator of Forest-cum-Principal Secretary, Forests, Environment and Wildlife Management Department, **Government of Sikkim** filed an affidavit. The Sikkim State Pollution Control Board was constituted by Notification dated 25.08.2014. The qualification/ knowledge/ experience of the Chairman and the Member Secretary of the Sikkim State Pollution Control Board are as under:-

<b>Sl. No.</b>	<b>Members</b>	<b>Prescribed qualification</b>	<b>Name of Members, Address &amp; Contact No.</b>	<b>Qualification/ Knowledge practical experience related to Environmental protection</b>
1.	Chairperson or Chairman	Being a person having special knowledge or practical experience in respect of matter relating to Environment Protection and having Knowledge & experience in	Smt. Kalawati Subba (Former Speaker of Sikkim Legislative Assembly)	<b><u>Qualification- M.A</u></b> <b><u>Experience/Knowledge</u></b> Smt. Kalawati Subba is present Chairperson of State Pollution Control Board of Sikkim State w.e.f 25 <sup>th</sup> May,

		<p>administering institution dealing with the matter aforesaid. The Chairman may be either whole time or part time as the State Government may think.</p>		<p>2015, for the period of 3 years. She is the Former Speaker of Sikkim Legislative Assembly and also served as the Minister, Animal Husbandry &amp; Veterinary Services &amp; Food Civil Suppliers &amp; Consumer Affairs. One of the senior most well-experienced person in the matter of administration, having practical knowledge and interest in dealing with the protection of Environment and Control of Pollution</p>
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5.	Member Secretary	<p>A full-time Member Secretary, Possessing Qualification, knowledge and experience of scientific, engineering or management aspects of pollution control to be</p>	<p>Shri T Gyatso Bhutia (SFS) Director of Forest, Member Secretary, State Pollution Control Board Forests,</p>	<p><b>Qualification</b> -Passed all India Higher Secondary (Class-XI Science) from Tashi Namgyal Higher Secondary School, Gagtok, in 1974. Pre-University(PU-</p>

		<p>appointed by the State Government</p> <p>Env. &amp; Wildlife Management Department, Government of Sikkim.</p>	<p>Science) Examination from St. Anthony's college, under North Eastern Hill University, Shillong (Meghalaya) and B. A. From University of North Bengal. Completed two year Rangers Training Course in Forestry and Allied Subject from Eastern Forest Rangers College (EFRC). Kurseong, West Bengal in 1977-79 Batch</p> <p><b><u>Experience/Knowledge</u></b></p> <p><u>In-service Training:</u> Completed capsule course in seed Technology &amp; Management for Forestry Professional conducted by the Silviculture Division, Forest Research Institute, Dehra Dun, during August, 1996. Attended Course on Environmental Concerns in Rural Development</p>
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				<p>from National Institute of Rural Development (NIRD), Rajendranagar, Hyderabad Biodiversity Conservation and Management Course from State Forest Service College, New Forest Dehra Dun, in November 1999.</p> <p>Served as Range Officer in the Land use &amp; Environment and Territorial Ranges for 14 years and deal mostly with the Conservation &amp; Protection of Environment, Control of illicit felling and encroachment Forest areas.</p> <p>Promoted and Inducted in State Forest Service as ACF in 1994 and posted as Assistant Conservator of Forest in Land use and Environment. Working plan Silviculture and Territorial to deals with Forest</p>
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				Research Conservator
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57. On behalf of **Maharashtra** Government, an affidavit has been filed by Principal Secretary Department of Environment. The relevant part of the affidavit relating to Chairman and Member Secretary of the Pollution Control Board is reproduced herein:-

“6. I say and submit that, the qualification of present Chairman is “Bachelor of Technology in Civil Engineering, Degree in Law (LLB), MBA (Finance)” and Member Secretary in B.V.Sc. in Veterinary Science and M.Sc. (Dairying) in Animal Nutrition”, respectively. I further say and submit that the present Chairman and Member Secretary full fill the criteria prescribed in the Water Act, 1974.”

58. The Secretary of Environment and Department of Forest **State of Chhattisgarh** has filed an affidavit and deposed the following:-

“It is pertinent to mention here that, as far as Chairman of the State Conservation Board is concerned, it is Mr N. Bajendra Kumar, a Senior Indian Administrative Service Officer, belonging to 1985 batch having the qualification of M. Sc in Zoology and M. Phil, in Environmental Biology. He has also obtained C.S.I.R Research Fellowship in Environmental Biology. Being a Senior I.A.S. Officer, he is having requisite qualification. He is also having experience of administration and knowledge in the field of environment. Thus the State of Chhattisgarh has appointed Mr. N. Bajendra Kumar as Chairman by its order dated 31/07/2002, who is well qualified and eligible person to hold the post of Chairman, in accordance with provisions of the Acts and directions and instructions issued by Govt. of India as well as by Hon’ble Supreme Court.”

.....  
.....

“That, the present Member Secretary of State Environment Conservation Board is Mr. Devendra Singh, having qualification of M.Sc. in Forestry from Indian Council of Forestry Research and Education (Deemed University) in the Year 1990. He is a Senior I. F.S Officer (Batch 1988) having 02 years experience of Rejuvenation, Restoration & Stabilization of Overburden Dumps of Mines of Northern Coalfields Limited and N.T.P.C Limited Singrauli. He has undergone Training Courses in ‘Natural Resources Management from I.I.M Bangalore in ‘Ecological Security Sensitization of Key Environmental/Forestry issues’ and ‘Biodiversity Conservation issues and Challenges’ from Indira Gandhi National Forest Academy Dehradun. Mr. Devendra Singh has been appointed as full fledged Member Secretary by order dated 04/03/2014, taken over the charge on 04/03/2014 itself and since then discharging duties of Member Secretary.”

59. On behalf of **Government of Goa**, the Secretary, Environment has filed an affidavit. According to it, the State Pollution Control Board was reconstituted vide notification dated 03.09.2015. The said notification was subsequently modified on 18.11.2015. The information with regard to Chairman and Member Secretary has been annexed as exhibit-B to the affidavit and the relevant part is as follows:-

**CHAIRMAN:-**

**Name :** Jose Manuel Norohna, Goa State Pollution Control Board

**Qualification: Educational:**

Master of Engineering (Industrial Engineering)-

Goa University in 1994-81% (through

**Professional:**

Member Institute of Engineers (India) Mechanical Engineering

**Experience: A) INDUSTRIAL: Total three and half year**

(i) As Chief Executive at a Singapore based Company and posted in Singapore, India, Ivory Coast and

Guinea Bissau-one year six month experience

- (ii) Works Manger for Gregory & Nicholas manufacturing artificial jewellery- two years experience

**B) Teaching: Total twenty for years**

- (i) Teaching in various capacities. Subjects related to manufacturing including Jigs and Fixture design, tool design

**C) Experience in field of Environment**

- (i) Member of Technical Advisory Committee of Goa State Pollution Board Pollution Control Board from 2007-2009.
- (ii) Member of Goa State Pollution Board from 2009-2012.
- (iii) Chairman of SEIAA (State Environment Impact Assessment Authority) appointed from April 2010 to April 2013, by MoEF, Government of India.
- (iv) Presently, Chairman Goa State Pollution Control Board from 4/09/2012 at a level of Principal Secretary, Government of Goa

**MEMBER SECRETARY:-**

**Name :** Levinson Jeronimo Martine, Goa State Pollution Control Board

**Qualifications:**

- 1) B.A.,
- 2) M.A.,
- 3) L.L. B.,
- 4) Diploma in production Engineering
- 5) P. G. D. M. from Goa Institute of Management

**Posting:**

- 1) Asst. Public Prosecutor from 2001-04
- 2) Dy. Director of Public Grievances from Feb 2005 to September 2005
- 3) Dy. Director / SDO / SDM, Mormugao from Sept 2005
- 4) Dy. Collector & Rent Controller, Mormugao
- 5) Superintendent of Sub Jail cum Judicial Lock-up, Sada, Vasco.

- 6) OSD to Department of Science, Technology & Environment
- 7) Under Secretary (Revenue). Secretariat
- 8) Dy. Collector/SDO/SDM, Mapusa
- 9) Dy. Collector (Revenue), Panaji, North Collectorate,
- 10) Officer on Special Duty to Hon. Chief Minister Shri. Manohar Parrikar
- 11) Managing Director, Goa Handicrafts, Rural & Small Scale Industries Development Corporation Ltd.
- 12) Director, Department of Science, Technology & Environment
- 13) Member Secretary, Goa Coastal Zone Management Authority (GCZMA)
- 14) Member Secretary, Goa State Environment Impact Assessment Goa-SEIAA

60. The Secretary, Environment of the **Union Territory of Chandigarh** has filed an affidavit giving information about the qualification and experience of Chairman and Member Secretary as under:-

<b>SL. NO</b>	<b>Name &amp; Designation</b>	<b>Designation in the Chandigarh Pollution Control Board</b>	<b>Qualification &amp; Experience</b>
1.	Sh. Vijay Kumar Dev, IAS, Advisor to Administrator Union Territory Chandigarh	Chairman	B.Tech in Electrical Engineering and a Member of Indian Administrative Services batch, 1987 of AGMUT Cadre. -He Served in the different Administrative capacity in different



			departments in Delhi, Daman & Diu, Arunachal Pradesh and presently serving in Chandigarh Administration. -He is having experience of more than 27 years in his cadre.
-	- - -	- - -	- - - - -
8	Sh.P.J.S. Dadhwal Scientist 'SE' Department of Environment Chandigarh Administration	Member Secretary	Graduate in Engineer with professional legal qualification and has worked in different capacities in Central Pollution Control Board. Presently working in Chandigarh Administration and having the charge of Member Secretary Chandigarh Pollution Control Committee, Chandigarh. He is having experience of more than 33 years in his cadre.

61. Similarly, an affidavit has been filed by the Deputy Resident Commissioner for **Andaman and Nicobar Administration** at New Delhi. The Central Pollution Control Board vide its Notification dated 3rd June, 2014 reconstituted the Committee called as "**Andaman and Nicobar Administration Pollution Control Committee**" in respect of the said Union Territory. Educational Qualification & Experience of Chairman and Member Secretary have been given in Annexure R-2(i)(ii) of the affidavit which is as under:-

<b>Sl. NO.</b>	<b>Pollution Control Committee</b>	<b>Name &amp; Designation</b>	<b>Educational Qualification &amp; Experience</b>
1.	Chairman	Shri D. M. Shukla Secretary (Science & Technology)	M. Sc (Botany), 30 years of experience in issues related to Forest, & wildlife.
2.	Member Secretary	Dr. P. Viswakannan Director (Science & Technology)	Ph.D in Agriculture Science. 12 years of experience in Management of Forest & Wildlife.

62. The **State of Jammu and Kashmir** has given the requisite information through an affidavit filed by Under Secretary, Department of Forest, Environment and Ecology. The State Pollution Control Board was constituted vide Notification dated 02.09.2014. The qualification of Chairman of the Board is M.Sc. (AIFC). The qualification of Member Secretary is B.Sc Agriculture, AIFC.

Another affidavit has been filed by Special Secretary Department of Forest, Environment and Ecology on 19.05.2015, wherein, name of the Chairman of the Pollution Control Board is given as Shri Abdul Razak and that of Member Secretary as Sh. Javid Iqbal Punjoo.

63. On behalf of the **State of Uttar Pradesh**, an affidavit has been filed by Special Secretary, Department of Environment

in compliance of the order dated 19.02.2015 passed by this Tribunal.

That the Members of Uttar Pradesh Pollution Control Board as reflected by the G.O. dated 25.02.2013, had been as follows:

1.	Sh. V. N. Garg, Principal Secretary Environment, Government of U.P	Part-time Chairman
2.	Special Secretary, Forest Department, Government of U.P.	Member
13.	Member Secretary, U.P. Pollution Control Board	Member

The Members of the UPPCB, as reflected by the G.O. dated 27.08.2014, are as follows:

1.	Syyed Javed Abbas (Javed Aabdi)	Full-Time Chairman
2.	Special Secretary, Forest Department, Government of U.P	Member
10.	Member Secretary, U.P. Pollution Control Board	Member

The details of qualification and experience of the Chairman are given at Annexure R-4 to the affidavit which are as under:-

**Name:** Syed Javed Abbas

**Education Qualification:** Post Graduate

**Personal information:-** "I have been active in grass root politics for the last twenty years. During this period of active politics, I have led various groups addressing the social concerns and causes.

Was part of activities, demonstrations on various local social issues like:

- Labour related problems
- Environmental issues
- Green Peace activities
- Law & Order related issues,
- Illegal excavation related to sand mining
- Increasing river pollution

The details of qualification and experience of the Member Secretary are given as under:-

**Name:** Mr. Jai Singh Yadav

**Educational Qualification:**

Sl. No	Examination Passed	Institution Board/ University	Subjects	Year	Division
1	B.Sc.	Kanpur University	Maths, Physics, Chemistry	1974	Second
2	B.Tech	H.B.T.I, Kanpur	Biochemical Engineering	1978	First
3	M. Tech	H.B.T.I Kanpur	Biochemical Engineering	1980	First

**Work Experience & Area of Specialisation:**

- i. Jointed the Rampur Distillery & Chemical Co. Ltd, Rampur (UP) as Chemical Engineer in the year 1980 and was in-charge of Pollution Control Board and Production.
- ii. Jointed the Central Pollution Control Board, New Delhi in 1982 and was associated with River Yamuna Water Monitoring and performance study of Pollution Control Measure in different industries.

- iii. In the year 1983 joined U.P. Pollution Control Board, Lucknow as Assistant Environment Engineer in Head Quarter, Lucknow.
- iv. In the year 1987 appointed as Environment Engineer in U.P. Pollution Control Board and worked as Regional Officer in Regional Offices at Bareilly, Varanasi, Lucknow, Ghaziabad and Noida.
- v. In the year of 2004 promoted as Chief Environmental Officer in UPPCB Lucknow as in-charge of Circle -2 which covers Regional Offices Kanpur, Jhansi, Allahabad, Ramabai Nagar and Sonbhadra.
- vi. In the year 2008 appointed as Chief Environmental Officer (Administration). The above post is link officer to the post of Member Secretary,
- vii. Appointed as Member Secretary, U.P. Pollution Board, Lucknow on 01-04-2012

64. The Under Secretary, Forest, Ecology and Environment Department of **State of Karnataka** has filed an affidavit wherein he has given qualification and experience of the Chairman and Member Secretary which as under:-

**CHAIRMAN:**

**Name:** Dr. Ayi Vaman Narashinh Acharya

**Designation:** Chairman

**Qualification:** MBBS

**Experience:** As Medical Practitioner in the Tribal areas in the Sahyadri Western Ghats, Gained rich experience about health needs of the Tribals and their Natural Environment  
Participated in several Environment activities like save Western Ghats Movement etc.,

Conducted several programmes/  
workshops on Bio-Fuels

**MEMBER SECRETARY:**

**Name:** Shri Vijayakumar, IFS  
**Designation :** Member Secretary, KSPCB  
**Qualification:** M.Sc. (Agr)

65. The Principal Secretary, Environment and Forest Department of **State of Tamil Nadu** has filed an affidavit. The information with regard to qualification and experience of Chairman and Member Secretary of State Pollution Control Board is as under:-

<b>Name of the Chairman</b>	<b>Designation</b>	<b>Qualification</b>	<b>Experience</b>
Mr. K. Skandan, IAS	Additional Chief Secretary/ Chairman, Tamil Nadu Pollution Control (Full Time) Chairman	M.A (Political Science) Madras University M.A (Rural Development Planning) University of East Anglia, U.K. Bachelor of Law Madras University	Over 32 years of experience in the administrative service in various senior capacities in the State and Central Government. In the central Govt. served as Addl. Secretary in the Ministry of Home Affairs until January 2014; looking after Central State relations and Jammu & Kashmir; in the State Govt. held

			<p>various senior positions. Among them held the first Registrar of Dr. MGR Medical University; Chairman of the Electricity Board; Principal Secretary Industries; Chairman &amp; Managing Director of Tamil Nadu News Prints Limited (Listed Public Sector undertaking) Commissioner Industries, Director of Agriculture etc.,</p>
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Dr. K. Karthikeyan was appointed as Member Secretary vide G.O.Ms. No. 83 Environment and Forests Department, dated 25.07.2014 by the Government of Tamil Nadu. He has gained the qualification of M.Tech (Environmental Engineering), Doctorate in Environmental Science and Master Degree in Industrial Engineering and Safety.

66. On behalf of Government of **NCT Delhi** an affidavit has been filed by Secretary, Environment GNCTD-cum-Chairman of Delhi Pollution Control Committee wherein he has deposed the following :-

“ That the deponent is a BE (Civil Engineering) from Delhi College of Engineering.

**Experience:**

- i. Duties are to ensure that planning/co-ordination takes place between policy making (Environment Department) and Regulatory wing (DPCC) in all issues related to pollution under various Acts/Rules
- ii. Started as Sub-Divisional Magistrate (SDM) in Pondicherry.
- iii. Director of Civil Supplies, Govt. of Pondicherry.
- iv. Secretary, (Civil Supplies), (Transport) and Information & Publicity Department as well Managing Director, Pondicherry Industrial Promotion Investment and Development Corporation (PIPDIC) in Pondicherry, Instrumental in setting up software Technology Park (STP) and Electronics Estate in Pondicherry.
- v. Served as Deputy Commissioner in Nicobar District in Andaman & Nicobar Admn. (1 year). District has large Forest area, inhabited by Tribals and complex issues relating to Forest/Environment were handled.
- vi. Secretary (Panchayati Raj)/Fisheries in Andaman Nicobar Islands which gives experience of issues relating to Tribals and their interface with Forests Department (24 year)
- vii. Secretary (New Delhi Municipal Corporation) (Dec. 2002 to January 2004)
- viii. Dy. Commissioner (New Delhi) (Jan., 2004 to January 2006)
- ix. Served as PS to Minister of State for Petroleum & Natural Gas & PS to Minister of Petroleum & Natural Gas, Govt. of India (March 2006 to May, 2009)
- x. Secretary (Social Welfare, Women & Child Development), Govt. of NCT of Delhi (June 2011 to July, 2012)
- xi. Presently Secretary (Environment & Forests)-cum-Chairman (DPCC)

Further he has deposed that Sh. Kulanand Joshi, DANICS (1991 Batch), is the Member Secretary, DPCC since 01/10/2014.



**Qualification:** M.A (Political Science), University of Meerut. Graduation, University of Garhwal, (Economics, History and Political Science). Served as SDM (Parliament Street, Sub Division, New Delhi Distt. ADM (Silvassa), UT Admn. Of Dadra & Nagar Haveli, General Manager, District Industries Centre, Silvassa, UT Admn. Of Dadra & Nagar Haveli. Project Director, Distt. Rural Development Agency, UT Admn. Of Dadra & Nagar Haveli. Deputy Secretary/Joint Secretary/ Addl. Secretary, Bhagidari Cell in the o/o Chief Minister, Govt of NCT Delhi (8 years). Bhagidari is an institution of Govt. of NCT Delhi for good governance strengthening citizen government partnership. For 08 long years the officer has been closely associated with Bhagidari institutions and has played important role in organising large group interactions with Citizen Groups (RWAs, Market Traders Associations & industries Association etc.) on civic issues including Environment of NCT of Delhi.

67. The Deputy Secretary, Forest and Environment Department has filed the affidavit on behalf of **State of Meghalaya**. The qualification and experience of Chairman and Member Secretary have been given in annexure-1, to the affidavit, which are as under:-

**CHAIRMAN:**

**Name:** Shri C. P. Marak

**Designation:** Addl. Principal Chief Conservator of Forests

**Experience:** Indian Forest Service since 1983

**Qualification:**

**I. Educational Qualification**

- B.Sc.( Agriculture)
- L.L.B
- B.Ed

**II. Professional Qualification**

Indian Forest Service [including 2 (Two) years probationary training in IGNFA Dehradun (Syllabus covering Forest Wildlife, Environment, Soil Signs, Geology, Bio-diversity, Acts & Rules

relating to the Environment, Forest Wildlife, IPC, CrPC, Evidence Act and 3½ years foundation course at the LBSNAA, Mussoorie)]

**MEMBER SECRETARY:**

**Name :** Shri J. H. Nengong

**Designation:** Senior Environmental Engineer;

**Experience:**

- Assistant Process Engineer, Mawmluh Cherra Cements Limited from 1985 to 1989
- Joined the Board's Service since 1989 as Assistant Environmental Engineer (AEE) and presently holding the post of Senior Environmental Engineer Since 2005,

**Qualification:**

**i. Educational Qualification**

- B.E(Chemical Engineering);

**ii. Professional Qualification**

- International Graduate Certificate in Environmental Management (Adelaide, Australia).

68. Similarly, an affidavit has been filed on 15.04.2015 by Mr. Sudhir Shirvastava, Assistant Law Officer who is Officer In-charge on behalf of **State of Madhya Pradesh**. According to it, the qualifications and experience of Chairman Pollution Control Board are as under:-

“It is pertinent to mention here that, as far as **Chairman** of the M.P Pollution Control Board is concerned, Dr. Narmada Prasad Shukla has qualifications of M.Sc. in Botany with specialization in Microbiology and Ph.B (Botany/Medical Microbiology). He has also obtained M.B.A post graduate degree. Dr. Shukla has 29 years of professional experience in the field of Environmental Science with 22 research publications and has also completed six research projects funded by Department of Biotechnology Government of India,

New Delhi. Prior to his appointment in M.P. Pharmaceuticals Ltd. Hyderabad between 12.01.1981 to 14.03.86 M.P. State Industries Developments Corporation between 17.03.86 to 30.06.1985 and M.P. Council of Science & Technology, Bhopal. Thus the State of M.P. has appointed Dr. Narmada Prasad Shukla as Chairman by its order dated 07/11/2009 & 09/11/2012, who is well qualified and an eligible person to hold the post of Chairman in accordance with the provisions of the Water (Prevention & Control of Pollution) Act, 1974, Section 4”

The qualification and experience of **Member Secretary** of M.P. Pollution Control Board read as under:-

That, the present Member Secretary of the M.P. Pollution Control Board is Shri Achyut Anand Mishra, having qualification of Bachelor of Engineering (1983) and Master of Technology in Environment Science (1985) from Indian Institute of Technology, Mumbai. He has undergone training courses in Tokyo, Japan on concept of Green technology at Asian Productivity Council in 2002 & on Swedish EPA Environmental Laws and its mechanism of implementations at Stockholm, Sweden in 2012. He has 27 years of working experience in M.P. Pollution Control Board at various positions. He has also executed Action Plan for critically polluted area with respect to the city of Indore. Thus the State of M.P. has appointed Shri Achyut Anand Mishra as Member Secretary by its order dated 04/03/2014, who is well qualified and an eligible person to hold the post of Member Secretary in accordance with the provisions of section 4 the Water (Prevention & Control of Pollution) Act, 1974.

69. On behalf of **Nagaland**, an affidavit has been filed by Secretary, Forest Department. The constitution of Pollution Control Board is as follows:

Sl. No.	Name	Designation	Experience	Qualification
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1	Shri Amenba Yaden	Chairman	IFS (Retd)	Diploma in Forestry
-	-	-	-	-
11	Shri Rusovil John	Member Secretary	IFS. RR 1987 (Rsd)	PG (Forestry)

70. **State of Manipur** has filed an affidavit through its Joint Secretary, Forest and Environment. According to the affidavit, the qualifications of the Chairman and Members Secretary and other Member are as following:-

1 Dr. Ng. Bijoy Singh, Chairman, MPCB (Post Graduate in Medical Science Ph D.)

.....  
.....

11 Shri T. Mangi Singh, Member Secretary, MPCB (Graduate in Engineering and Post Graduate in Environmental Studies). He has taken the Charge as full time Member Secretary, Manipur Pollution Control Board w.e.f. 10<sup>th</sup> March, 2015.

71. Similarly, the **State of Gujarat** has filed an affidavit through its Joint Secretary, Forest & Environment. The qualifications and experience of Chairman of Pollution Control Board are as under:-

That presently Dr. K. U. Mistry is a full time Chairman, GPCB. He was appointed in 2010 and had been reappointed in 2013 and is continuing till date.

His Qualifications, Experience and other is as follows:-

- The Chairman (Dr. K.U. Mistry) possess M.E. Degree from the Gujarat University, Ahmedabad and has also done L.L.M in the year 1982 from the Gujarat University, Ahmedabad. He completed his PHD in the field of Risk Management –Chemical in

the year 2005 from the South Gujarat University, Surat.

- He has working experience in the Lab our Department Govt. of Gujarat from the year 01.07.1967 to 28.02.2001 and Retired as Deputy Chief Inspector of Factories.
- He worked as a Member of Public Hearing Committee at Surat as per Notification of Ministry of Environment and Forests, New Delhi from 1999-2001.
- He also worked as Chairman of Gujarat Public Service Commission Ahmedabad from 29.02.2004 to 14.02.2005.
- He is working as the Chairman of the State Level Expert Appraisal Committee(SEAC), Since 12.06.2007.
- He was visiting faculty at post Diploma course of industrial Safety at Surat, Ahmedabad, Jamnagar college from the year 1987 to 2004.
- He was visiting faculty for ISTAR College, V.V. Nagar, Gujarat from 2006-2008. He also worked as Head of Department and professor, ISTAR College, V.V.Nagar, Gujarat from 29.12.2006 to 22.01.2008.

The Qualification of Member Secretary is as under:-

Shri K.C. Mistry is holding the post of Member Secretary of the Gujarat Pollution Control Board and he is appointed on 13-02-15. He is Master of Science in Organic Chemistry.

- He was working as Senior Scientist since 5-8-1996 and he was promoted as Senior Environment Scientist on 19-09-2007.
- He was working as a nodal officer for intergrated coastal zone management project GPCB.
- He has working as Vigilance Officer in GPCB, H.O., Gandhinagar.
- He also worked as a Chairman of the Technical Committee and also Member in important Various Committee.

72. In compliance of Order dated 19.02.2015, the State of Uttarakhand has filed a separate Affidavit through its Principal

Secretary, Forest and Environment. The relevant portion of the affidavit is as under:-

“That it is pertinent to mention that the **Chairman** of UEPPCB is neither a political person nor a journalist as is observed by the Hon’ble Tribunal, to be the case in some of the States. However, vide notification dated 01.05.2002, it has been provided that the Principal Secretary, Forest & Environment will be the Ex-Officio Chairman of the Board.

The deponent would further submit that the said notification of the State of Uttarakhand is clearly as per the pith and substance of the said provision of the Act, since the Principal Secretary, Forest & Environment of the State is a person, who is having a vast knowledge & experience in administering institutions dealing with the matters relating to Environment Protection. A Principal Secretary, Forest & Environment, usually is the senior IAS officer, having a minimum experience of more than include the matters relating to Environment. It is pertinent to mention here that deponent’s educational qualification is MBBS. Being a science background person, has full understanding of the environmental issues. Deponent also has experience of serving as Member Secretary of the State Pollution Control Board from July 2005 to August 2006.

That is pertinent to mention that the **Member Secretary** of the Board i.e. UEPPCB is neither a political person nor a journalist but is a full time Member Secretary of the Board being a senior Officer of Indian Forest Service Possessing Post Graduate/Master degree in Soil Science and Agriculture Chemistry with Pollution Control and Environment Management being part of curriculum during training in Forest Academy and having vast experience in the Management of Wild life and Environment, qualifying to hold the said post.”

73. On behalf of **State of Jharkhand** the Deputy Secretary, Forests and Environment Department has filed an affidavit. The relevant extract of the Affidavit in respect of appointment of Chairman and Member Secretary are as under:-

“That it is stated and submitted that the regular appointment/nomination of the Chairman and the Member Secretary is under process. The advertisement for the appointment for the post of Chairman, Jharkhand State Pollution Control Board (JSPCB), Ranchi was published in the newspaper “Prabhat Khabar” on 12.03.2014. The advertisement for the appointment for the post of Member Secretary, Jharkhand State Pollution Control Board (JSPCB), Ranchi was published in the newspaper “Prabhat Khabar” on 07.01.2014.”

“That it is stated and submitted that in the meantime, Sh. Ajay Kumar Mishra, Retd. Principal Chief Conservator of Forest has been nominated as Ad-hoc Chairman of the Jharkhand State Pollution Control Board till the selection process is completed. He has done M.Sc. in Forestry and he is a retired Indian Forest Service Officer.

That it is stated and submitted that Sh. R. N. Kashyap is working as in-charge of Member Secretary of the Jharkhand State Pollution Control Board and he has done M.Sc in Chemistry.”

74. The Deputy Resident Commissioner, Government of **Arunachal Pradesh** in Delhi has filed an affidavit, as per the direction of the Tribunal, with regard to the Chairman and Member Secretary of the State Pollution Control Board, as annexure A-4 to the affidavit, which are as under:

1.	Dr. Shashi Kumar, IFS	Chairman	M.Sc. (Botany) M.Sc. (Forestry), PhD	Administrative, Environment Management, laws having scientific background etc.
2.	Shri Ngilyang Tam, IFS, Chief Conservator	Member Secretary	B.Sc (Hons) Ag. M.Sc. (forestry)	Administration, Environment Management, Laws having scientific

	of Forests			background, etc.
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75. On behalf of **State of Bihar**, an affidavit has been filed by Senior Law Officer of Bihar State Pollution Control Board. According to it, the qualification and experience of Chairman are as under:-

<b>Sl. No</b>	<b>Name/Designation of Members</b>	<b>Qualification &amp; Experience</b>
1.	Dr. Subhash Chandra Singh, Chairman, Bihar State Pollution Control Board.	Ph.D in Zoology, Awarded by Patna University, 1987. Fellowships:- 1. Fellow of Academy of Zoology 2. Fellow of Zoological Society of India 3. Fellow of Entomological Society of India.
-	-	-
17	Sri Rakesh Kumar, I.F.S, Member Secretary, Bihar State Pollution Control Board	B.Sc. Physics (Hons) Diploma in Forestry, Diploma in Social Forestry, (Indian Forest Service, 1991, Bihar Cadre.)

76. On behalf of **State of Tripura**, an affidavit has been filed through its Resident Commissioner at Delhi, with regard to the appointment of Chairman and Member Secretary. The informations given are as under:-

**CHAIRMAN:**

Government has nominated the name of Professor Amitava Debroy as Chairman of Tripura



State Pollution Control Board in Tripura since 01/10/2014. His experience is mentioned below;

- i. **Teaching & Research:** From 30.08.1968 to 30.09.2008, Retired as professor, Tripura University.
- ii. **Administrative:**
  - a) Coordinator, IGNOU, Tripura University Study Centre for 6 years.
  - b) Director, Directorate of Distance Education, Tripura University.
  - c) President, Tripura Board of Secondary Education (From 01.10.2008 to 30.09.2014).

**Qualification:-** He is M.Sc. in Human Physiology from Calcutta University and Ph. D from Calcutta University.

**MEMBER SECRETARY:**

Accordingly, Government nominated Director, Science, Technology & Environment, Government of Tripura as the fulltime Member Secretary of Tripura State Pollution Control Board, Director holds the background as stated above.

77. On behalf of **Rajasthan** Pollution Control Board, an affidavit has been filed by Sr. Environmental Engineer (textile) in respect of Chairman of the State Board, namely, Smt. Aparna Arora (IAS). The qualification and experience are as under:-

The incumbent possess the master's Degree in Political Science from Delhi University

**Experience :**

1. Collector & D.M. Banswara
2. Divisional Commissioner, Udaipur,
3. Commissioner T.A.D
4. Project Director Rajasthan Health Development Project (World Bank Aided),
5. Secretary & Commissioner, Panchayati Raj Development
6. Managing Director, Rajasthan State Mines and Minerals Ltd ( Govt. Public Sector Undertaking) as

also Director of Mines and Geology, Government of Rajasthan (1.4.2009 to 20.06.2009)

78. Particulars of the Member Secretary of the Rajasthan State Pollution Control Board are as follows:-

The educational qualification profile of the present incumbent Shri K.C.A Arun Prasad, an officer from Indian Forest Service of the year 1997, Rajasthan Cadre is as under:

### **Educational Qualification**

<b>Sl. No</b>	<b>Degree/Diploma</b>	<b>University /Institute</b>	<b>Year</b>	<b>Subject</b>
1	B.Sc (forestry)	Tamil Nadu Agriculture University	1993	Forestry
2	M.Sc. (Forestry)	Tamil Nadu Agriculture University	1995	Forestry
3	Post Graduate Diploma in Wildlife Management	Wildlife Institute of India, Dehradun	2003	Wildlife

### **Details of posting**

Name of organisation

1. Divisional Forest Office, Banswara
2. DCF-Alwar,
3. WII, Dehradun
4. Keoladeo National Park, Bharatpur,
5. DFO, Jhalawar,
6. Indira Gandhi Forestry Academy, Dehradun
7. Rajasthan Pollution Control Board

The 6 years deputation tenure in the Indira Gandhi National Forest Academy (IGNFA), Dehradun has provided opportunities to learn the best practices in the field of Forest, Wildlife, Environment, Climate Change etc.

79. However, it is pertinent to note that in the affidavit so filed on behalf of the Rajasthan Pollution Control Board, the

deponent has mentioned in paragraph 8 of the affidavit with regard to outgoing incumbent, Shri Deep N. Pandey and his resume has also been annexed as annexure-E. A bare perusal of the resume of the predecessor in office, to the present Member Secretary Shri. K.C.A Arun Prasad, reflects a big difference in qualification as well as experience between the two officers. The present Member Secretary is not only far less in qualification and experience than his predecessor but whether he fulfils the requirement of law, is a question which needs to be considered.

80. In compliance of order dated 19.02.2015, a letter has been sent by the Member Secretary, **Kerala** Pollution Control Board to the Central Pollution Control Board on 19.03.2015. It has been informed that qualification of the Chairman Shri K. Sajeevan is B.Sc Engg. (Chemistry), M.Sc. Engg. (Chemistry) and M.E. (Env. Engg) and is having 30 years of experience. The Member Secretary of Kerala Pollution Control Board is Smt. P. Molikutty who is having the qualification of B.Sc Engg. (Civil), M.Tech (Env. Engg) and having experience of 31 years. The Administrative Officer of Kerala State Pollution Control Board has sent a letter on 19th March, 2015 to the Senior Law Officer, Central Pollution Control Board giving information about the Chairman and Member Secretary. The Chairman was Shri K. Sajeevan, his educational qualifications are B.Sc. Engineering (Chemistry), M.Sc. Engineering. (Chemistry) and M.E. (Environmental Engineering). The Member Secretary is Smt. P.

Molikutty. Her educational qualifications are B.Sc Engineering. (Civil), M.Tech (Environmental Engineering).

81. An affidavit has been filed on behalf of **State of Andhra Pradesh** by its Special Secretary to the Government, Environment, Forests, Science & Technology Department. He has deposed that the Chairman of Andhra Pradesh Pollution Control Board is Dr. G. N. Phani Kumar, whose educational qualification is M.A (Political Science) Ph.D. He had worked earlier as Deputy Director General, in the Environment Protection and Research Institute (EPTRI) Hyderabad. As per the letter dated 30.03.2015 sent to the Secretary, MoEF, annexure A-2 of the affidavit, the Member Secretary of the Andhra Pollution Control Board is Shri B.S.S. Prasad and his education qualifications are M.Sc. Biochemistry, M.Phil Biochemistry, AIFC.

The Member Secretary, Andhra Pradesh Pollution Control Board had also written a letter to Senior Law Officer, Central Pollution Control Board on 24<sup>th</sup> March, 2015 in response to his letter dated 24<sup>th</sup> March, 2015, whereby information with regard to Chairman and Member Secretary Pollution Control Board had sent. Shri I. Y. R. Krishna Rao (IAS), Chief Secretary of Andhra Pradesh Government was the Chairman of State Pollution Control Board and his educational qualifications are M.A. (Economics) and M.Sc. (Agriculture). Shri B.S.S Prasad, IFS (1983) was the Member Secretary of the Andhra Pradesh Pollution Control Board,

his educational qualifications are M.Sc Biochemistry, M.Phil Biochemistry and AIFC.

An affidavit has been filed by Shri Surender Pandey, Special Secretary, Environment and Forest, Government of Andhra Pradesh along with 3 documents, namely, notification for constitution of Pollution Control Board after bifurcation of Andhra Pradesh State, an order to appoint officials and the bio-data of the Members of the Board. Dr. G.N. Phani Kumar, I.A.S. (Rtd) has been appointed as Chairman and his educational qualifications are M.A, Ph.D, MCSD. Shri B.S.S. Prasad, IFS has been appointed as Member Secretary and his educational qualifications are M.Sc(Biochemistry), M.Phil & AIFC.

82. On behalf of Government of **Puducherry**, an affidavit has been filed by its Director, Department of Science, Technology & Environment. As per annexure-II annexed to the affidavit, the Chairman of Puducherry Pollution Control Committee is Dr. V. Candavelou. His educational qualifications are Master of Veterinary Science, M.A in Development Studies (specialization in public policy & management) and L.L.B. The Member Secretary deponent himself, namely, Shri M. Dwarakanth. His educational qualifications are M.Sc, M.Phil, Environmental Science. It may be noted that deponent is also working as Director in the Department of Science, Technology and Environment, Government of Puducherry.

83. An affidavit has been filed on behalf of **Govt. of Odisha** by the Additional Chief Secretary, Department of Forest & Environment, on 20th July, 2015, in compliance of the order passed by the Tribunal on 19.02.2015. The State Pollution Control Board of Odisha was notified on 11.10.12. The Chairman of Pollution Control Board is deponent himself who is a Member of Indian Administrative Services. His educational qualifications are B.Tech (Hons) PGDIM. As per his depositions, he is also working as Additional Chief Secretary, Department of Forest & Environment, Government of Odisha. The Member Secretary is Shri Rajiv Kumar, IFS his educational qualification is M.Sc. Geology.

84. In response to letter dated 18.03.2015 sent by Senior Law Officer, Central Pollution Control Board, the Member Secretary of the **Telangana** State Pollution Control Board had sent the required information vide his letter dated 26.03.2015. It has been stated in the enclosure to the letter that the Chairman of Telangana Pollution Control Board is Shri Rajiv Sharma, IAS who is also Joint Secretary of State Government. His educational qualifications are Ph.D. (USA), M.A & L.L.B and has 33 years of experience. The scribe of the letter, namely, Shri V. Anil Kumar is also an IAS and his educational qualification is B.Tec. He is having 20 years of experience.

85. The Member Secretary, **Mizoram** State Pollution Control Board has sent a letter to the Senior Law Officer, CPCB

on 1st April, 2015, in reference to letter dated 15th March, 2015 giving the details about the Chairman and Member Secretary of Mizoram State Pollution Control Board. As per the letter, Shri R. C. Thanga was the Chairman of Mizoram Pollution Control Board. He is a retired Member of Indian Forest Services, his educational qualifications are M.Sc. Botany. Shri. C. Lalduhawna was the Member Secretary of the Mizoram Pollution Control Board, his educational qualifications are M.Sc (Environment Ecology), B.Tech (Chemical).

86. An affidavit in compliance of the order dated 19th February, 2015 passed by the Tribunal, has been filed by the Assistant Commissioner, **Government of Assam**, at New Delhi. He has deposed that Dr. R. M. Dubey, IFS was the Chairman Assam Pollution Control Board. His educational qualifications are M.Sc (Chemistry) and Ph.D. Shri B. K. Baruah is the Member Secretary and his educational qualifications are B.Sc (PCM) and B.Tech.

87. It was contended on behalf of the applicant that the States had been violating the provisions of water Act 1974 and Air Act, 1981 by illegally appointing its officers, such as Principal Secretaries of Forest and Environment department, who are mainly IAS officers, as Chairman of the Board. Similarly Member Secretary have been appointed in the State Board by their designations and Member of the Indian Forest Services working with it. As per the relevant provisions of Law such appointments

were to be of persons who are to possess special knowledge and practical experience in Environment.

Further the State Government had failed to comply with the directions/guidelines issued by Hon'ble Supreme Court Monitoring Committee of MoEF, Government of India which provided that non-technical person should not be appointment as Chairman, Member Secretary and other Member of the Board. In fact, the Boards were to be headed and staffed by technically competent professionals.

The State Government have also not appointed the Members of the Board for a fix term of 3 years but according to their term of service in the State Government. The Member Secretary have not been appointed permanently which would lead to smooth functioning of the Board and most of them by way of on part time arrangement. Even when full time Member Secretary is appointed, he is not allowed to complete his tenure.

It is also submitted that in many of the States, Water and Air Act Rules have not been notified which would have made the State Board run smoothly. The State Boards, which have high responsibility on its shoulders are not even regularly meeting, as per law. Therefore, it is submitted that the State Board which has violated the provisions of Water and Air Act be done away with and be reconstituted in accordance with law and directions/guidelines issued by Supreme Court Committee of



MoEF. Meanwhile, the State Boards which are not legally constituted, directions be issued to the Central Pollution Control Board to take over their functioning under Section 8(2) of Water Act as well as Air Act.

88. On behalf of the State Government and Union Territories, it has been contended that the appointments to the aforesaid posts have been validly made under the provisions of the statute, namely Section 4 (2)(a) and (f) of the Water Act. Further it has been submitted that the Act does not lay down any basic academic qualification which is to be possessed by a person seeking to be appointed as Chairman / Member Secretary. The Counsels for the State Governments have strenuously argued that there is an alternative to the special knowledge, which is practical experience in the matters of Environment Protection. It has been further submitted by the Counsels for the States that there is third alternative to special knowledge and practical experience, that is knowledge and experience in administering institution relating to matters of environmental protection. They have also submitted that education imparted to the probationers of Indian Forest Services (IFS), is sufficient qualifications in the field of environmental protection.

89. Before proceeding further it would be appropriate to mention here the **relevant provisions of Law** in respect of

constitution, powers and functions of the State Board, which are as under:-

**Water (Prevention and control of Pollution) Act, 1974,**

**2. Definitions**

(f) *"prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;*

**4. Constitution of State Boards**

1. The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board, under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.
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.
  - 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.

90. It is pertinent to mention here that Section 4(3) gives an autonomous status to the State Board which provides as under:-

**Section 4(3)**

Every State Board shall be a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire hold and dispose of property and to contract, and may, by the said name, sue or be sued.

**5. Terms and conditions of service of members**

*(9)The other terms and conditions of service of the Chairman shall be such as may be prescribed*

*(12)Member-secretary and officers and other employees of Board  
The terms and conditions of service of the member-secretary shall be such as may be prescribed.*

**17. Functions of State Board**

- (1) Subject to the provisions of this Act, the functions of a State Board shall be-
- (a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
  - (b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
  - (c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

- (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;
- (f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;
- (g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;
- (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
- (i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
- (j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
- (k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order-

- (i) for the prevention, control or abatement of discharges of waste into streams or wells;
- (ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;
- (m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
- (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
- (o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.

### **19. Power to obtain information**

- (1) For the purpose of enabling a State Board to perform the functions conferred on it by or under this Act, the State Board or any officer empowered by it in that behalf, may make surveys of any area and gauge and keep records of the flow or volume and other characteristics of any stream or well in such area, and may take steps for the measurement and recording of the rainfall in such area or any part thereof and for the installation and maintenance for those purposes of gauges or other apparatus and works connected therewith, and carry out stream surveys and may take such other steps as may be necessary in order to obtain any information required for the purposes aforesaid.
- (2) A State Board may give directions requiring any person who in its opinion is abstracting water from any such stream or well in the area in quantities which are substantial in

relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, give such information as to the abstraction or the discharge at such times and in such form as may be specified in the directions.

- (3) Without prejudice to the provisions of sub-section (2), a State Board may, with a view to preventing or controlling pollution of water, give directions requiring any person in charge of any establishment where any <sup>17</sup>[industry, operation or process, or treatment and disposal system] is carried on, to furnish to it information regarding the construction, installation or operation of such establishment or of any disposal system or of any extension or addition thereto in such establishment and such other particulars as may be prescribed.

## **27. Refusal or withdrawal of consent by State Board**

- (1) A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.
- (2) A State Board may from time to time review-
- (a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 26 is granted a notice making any reasonable variation of or revoking any such condition.
  - (b) the refusal of any consent referred to in sub-section (1) of section 25 or section 26 or the grant of such consent without any condition, and may make such orders as it deemed fit.
- (3) Any condition imposed under section 25 or section 26 shall be subject to any variation made under sub-

section (2) and shall continue in force until revoked under that sub-section.

### **32. Emergency measures in case of pollution of stream or well**

(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land] or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations, as it may consider necessary for all or any of the following purposes, that is to say-

- (a) removing that matter from the stream or well or on land and disposing it of in such manner as the Board considers appropriate;
- (b) remedying or mitigating any pollution caused by its presence in the stream or well;
- (c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into the stream or well or on land or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operation.

### **33A. Power to give directions**

Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

*Explanation :* For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or the storage or regulation or supply of electricity, water or any other service.

#### **64. Power of State Government to make rules**

(1) The State Government may, simultaneously with the constitution of the State Board, make rules to carry out the purposes of this Act, in respect of matters not falling within the purview of section 63:

*PROVIDED that when the State Board has been constituted, no such rule shall be made, varied, amended or repealed without consulting that Board.*

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,-

(e) the terms and conditions of service of the Chairman and the Member-Secretary of the State Board under subsection (9) of section 5 and under subsection (1) of section 12;

91. **Air (Prevention and Control of Pollution) Act**, which came subsequently in year 1981 provides:

**(2) Definitions. – In this Act, unless the context otherwise requires, -**

(n) “prescribed” means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

Section 4 of the Act provides:-

That the State Pollution Control Board constituted under Section (4) of the Water Act, 1974 to be set up as Board under Air Act 1981, also.

**4. State Pollution Control Boards constituted under Sec.4 of Act 6 of 1974 to be State Boards under this Act. –**

In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State



Government has constituted for that State a State Pollution Control Board under Sec. 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under Sec. 5 of this Act, and accordingly that State Pollution Control Board shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under this Act.

92. In other words, if the State Government has not constituted a State Pollution Control Board under the Water Act, then the Constitution of the State Board is to be under Section (5) of the Act which reads as follows:-

**5. Constitution of state boards. –**

- (1) In any State in which the Water (Prevention and Control of Pollution), Act 1974 (6 of 1974), is not in force or that Act is in force but the State Government has not constituted a [State Pollution Control Board] under that Act, the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board for the Prevention and Control of Air Pollution under such name as may be specified in the notification, to exercise the powers conferred on, and perform the functions assigned to that Board under this Act.

A State Board constituted under this Act 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 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, as the State Government may think fit, to be nominated by the State Government to represent that Government;
- (c) such number of persons, not exceeding five, as the State Government may think fit, 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, as the State Government may think fit to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interest, which in the opinion of that 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 having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Government.

Provided that the State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution.”

It is to be noted that proviso to Sub Section 5 puts additional conditions with regard to members to be appointed in the Board.

93. It is important to note here that under **Sub Section (3) of Section (5)**, every State Board constituted under the Act shall be a body corporate with the name specified by the State Government in the notification issued under the Sub-Section 1, having perpetual succession and a common seal with power, Subject to the provisions of this Act, to acquire and dispose of property and to contract, and may by the said name sue or be sued.

94. **7. Terms and conditions of service of members –**

*(7.) The other terms and conditions of service of the Chairman and other members (except the Member-Secretary) of a State Board constituted under this Act shall be such as may be prescribed.*

**14. Member-secretary and officers and other employees of State Boards. –**

*(1) The terms and conditions of a service of the member-secretary of a State Board constituted under this Act shall be such as*

*may be prescribed.*

95. Under Section 17 of the Air Act, 1981, the functions of the State Board have been enumerated, which reads as follows:-

**17. Functions of State Boards –**

1. Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the functions of a State Board shall be: -

- (a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
- (b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
- (c) to collect and disseminate information relating to air pollution;
- (d) to collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organize mass-education programme relating thereto;
- (e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
- (f) to inspect air pollution control areas to such intervals as it may think

necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

- (g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft;  
Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quality and composition of emission of air pollutions into the atmosphere from such industrial plants;
- (h) to advise the State Government with respect to the suitability of any premises or location for carrying or any industry which is likely to cause air pollution;
- (i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
- (j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purpose of this Act.

2. A State Board may establish or recognize a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

**20. Power to give instructions for ensuring standards for emission from automobiles –**

With a view to ensuring that the standards for emission of air pollutions from automobiles laid down by the State Board under Cl. (g) of sub-section (1) of Sec. 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act (4 of 1939) and such authority shall, notwithstanding anything contained in that Act or the rules made thereunder be bound to comply with such instructions.

**22. Persons carrying on industry, etc, not to allow emission of air pollutants in excess of the standards laid down by state Board –**

No person operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollution in excess of the standards laid down by the State Board under Cl. (g) of sub-section (1) of Sec. 17.

**25. Power to obtain information –**

For the purposes of carrying out the functions entrusted to it, the State Board or any officer empowered by it in that behalf may call for any information (including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutions) from the occupier or any other person carrying on any industry or operating any control equipment or industrial plant and for the purpose of verifying the correctness of such information, the State Board or such officer

shall have the right to inspect the premises where such industry, control equipment or industrial plant is being carried on or operated.

**26. Power to take samples of air or emission and procedure to be followed in connection therewith –**

(1) A State Board or any officer empowered by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed.

(2) The result of any analysis of a sample of emission taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), when a sample of emission is taken for analysis under sub-section (1), the person taking the sample shall –

(a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, collect a sample of emission for analysis;

(c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send, without delay, the container or containers to the laboratory

established or recognized by the State Board under Sec. 17 or, if a request in that behalf is made by the occupier or his agent when the notice is served on him under CI. (a), to the laboratory established or specified under sub-section (1) of Sec. 28.

(4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under CI. (a) of sub-section (3) then, -

(a) in a case where the occupier or his agent wilfully absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container or containers of the sample of emission as required under CI.

(c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the sample, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or specified under sub-section (1) of Sec. 28 and such person shall inform the Government Analyst appointed under sub-section (1) of Sec. 29, in writing about the wilful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container or containers.

### **31-A. Power to give directions –**

Notwithstanding anything contained in any other law, but subject to the



provisions of this Act, and to any directions that the Central Government may give in this behalf, a board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, shall be bound to comply with such directions.

**Explanation** – For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct –

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

96. It may be noted here that in Chapter VI, Section 37, provides that in case of failure of compliance of Section 22, 27 or directions issued under Section 31(A), the State Board has the power to impose penalties after following the procedure laid down therein.

**97. 54. Power of State Government to make rules –**

*(1) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:*

*(a) the qualification, knowledge and experience of scientific, engineering or management aspects of pollution control required for appointment as Member-Secretary of a State Board constituted under the Act;*

*(aa) The terms and conditions of service of the Chairman and other members (other than the Member-Secretary) of the State Board*

*constituted under this Act under sub-section (7) of sec. 7;*

*(f).the terms and conditions of service of the member-secretary of a State Board constituted under this Act under sub-section (1) of Sec. 14,*

98. Another important enactment is the **Environmental Protection Act, 1986**. Section 2 of the said Act gives the definition, and interalia, that of environment.

## **2.DEFINITIONS**

*(a) "environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;*

99. Section 3 provides as under:

### **Power of Central Government to take measures to protect and improve environment**

(1) Subject to the provision of this Act, the Central Government shall have the power to take all such measures as it deems necessary of expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution .

100. Section 5 of the Act reads as under:

### **5. Power to give directions**

*Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this*

*Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.*<sup>3</sup>

*Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--*

*(a) the closure, prohibition or regulation of any industry, operation or process; or*

*(b) stoppage or regulation of the supply of electricity or water or any other service.*

101. Section 24 of the Environment Protection Act gives the over-riding powers, which is as follows:

#### **24. Effect of other laws**

*(1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.*

*(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.*

102. With the aforesaid provisions of law, under the Environmental Protection Act (Section 3), it is incumbent on the **Central Government to take measures to protect and improve environment** which includes issuing appropriate directions to the State Governments.

103. As early as in the year 1997, the Secretary, Ministry of Environment and Forest, Govt. of India had written letters to all

the Chief Secretaries of the States, showing concern of the appointment of key post in Pollution Control Boards as per requirement of Water Act, 1974 and Air Act, 1981 which was to be done on priority basis.

The said letter dated 26.09.1997 reads as under:

**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 statues. Hence, these organizations need to be suitably strengthened so that they can cope up with the tasks. In fact, the Hon'ble Supreme Court has also had occasion to observe on the unsatisfactory performance of State Boards in 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 post 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,

Your sincerely,  
(Vishwanath Anand)

104. Thereafter, a national conference of Ministers of Environment and Forest was held in Coimbatore on January 29-30, 2001 where several important recommendations were made regarding effective functioning of the State Pollution Control Boards including, induction of academicians, legal Professionals, health experts and technologist as Board members. In order to take necessary action for implementation of the recommendation made in the said national conference, letter was issued by the Secretary, Ministry of Environment and Forest, Government of India, of the Chief Secretaries on **03.07.2001** which is reproduced here in:

Government of India  
Ministry of Environment and Forest  
Paryavaran Bhawan  
C.G.O Complex, Lodi Road, New Delhi-110003  
Tel:4360721, 4361896,FAX: (011) 4362746  
Email:pvj@nic.in

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 and 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). Stream lining 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.

Your Sincerely,

(P.V Jayakrishnan)

To Chief Secretaries of all States/U.Ts

105. It was in the year 2005, that Hon'ble Supreme Court in the case of Research Foundation of Science, Technology, National Resources Policy Vs. U.O.I and another (W.P 657 of 1995) decided on 14.10.2005 had issued directions to set up a Monitoring Committee to ensure time bound implementation of various directions given in the said order. It is to be noted that

the said directions included the issue in the present case that is to say, appointment of Chairperson and Member Secretaries of State Pollution Control Boards. Soon after the directions of the Hon'ble Supreme Court, a letter was issued by Additional Director and Member Secretary of Supreme Court Monitoring Committee to all the Chief Secretaries of the States on 27.07.2005 with the directions that the matter be given highest consideration and reply be provided within 4 weeks. The said letter dated 27.07.2005 is produced herein:

**SUPREME COURT MATTER**

**MOST IMMEDIATE  
BY SPEED POST**

No. 23-8/2004-HSMD (Vol.II)  
Govt. of India  
Ministry of Environment & Forests,  
(HSM Division)

\*\*\*\*

Room No. 927, Paryavaran Bhawan,  
C.G.O. Complex, Lodhi Road,  
New Delhi – 110003  
Dated 27<sup>th</sup> July, 2005

To

The Chief Secretaries of All States/UTs  
(As per the list enclosed)

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

Sir,

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

2. During its interactions with various pollution control officials, the Supreme Court Monitoring Committee (SCMC) has noticed that the State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) of UTs were not constituted in accordance with the provisions given in the Water Act, 1974 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 matters aforesaid.”

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

5. The MGK Menon Committee had recommended in its report that “The Chairmen of the Pollution Control Boards; Committees should be individual 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 issues. They must have an understanding of law. Their Chairpersons would have to be fully involved in the task of environment construction and planning. Appointment of the Chairpersons of the Board should be on full time basis.”

### **Member Secretaries of the Board:**

6. Similarly, in respect of the post of Member Secretary, the statutory provisions (Water/Air Act) require that he be full time, possessing qualifications,



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

7. In relation to appointment of Member Secretaries, the Menon Committee had 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 or from the environmental field as members of the Board. Board Members are increasingly being appointed for political purposes. This is leading to ineffective and inefficient functioning of SPCBs/PCCs.

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 the States that have competent Chairpersons 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 and came to the firm conclusion that only technically qualified professionals should be appointed to the critical positions of Chairpersons, Member Secretary and Members of the Pollution Control Boards so that their functioning can be strengthened as required in terms of paragraph 41.1 of the Supreme Court’s order dated 14.10.2003.

13. The Committee is also of the view that recommendations of the MGK Menon Committee be fully respected and the Chairpersons should be appointed on full-time base without full time 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 State Pollution Control Boards" prepared by the Programme Evaluation Organization of the Planning Commission.

16. The Planning Commission report included: "Considering the interesting technicalities involved in the functions to be performed by these Boards, it is essential that technical person 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 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/-

(M.Subba Rao)

Additional Director &  
Member Secretary

Supreme Court Monitoring Committee

Telefax: 011-24361416

E-mail:wowsubarao@yahoo.co.in

106. The Chairman of Supreme Court Monitoring Committee had also issued similar letter to all the Chief Secretaries of the States mentioning the urgency of the matter and speedy response. The said letter dated 16.08.2005 reads as under:

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

Dated 16<sup>th</sup> 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. 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.

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 of 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 Court's 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 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

(Dr. G. Thyagarjan)  
Chairman,

Supreme Court Monitoring Committee  
Terlefax: 011-24361410  
Email: drgarajan @yahoo.co.in

107. Again the Advisor to Government of India, MoEF &CC, referred to the aforesaid letters sent earlier, to all the Chief Secretaries of the State with the instructions that the guidelines issued in the letter dated 16.08.2005 stipulating the appointment of persons of proper knowledge and experience, should be scrupulously be followed and the Ministry by informing of the action taken. Letter dated 15.07.2015 reads as under:

Government of India  
Ministry of Environment, Forests and Climate  
Change  
Indira Paryavaran Bhawan, Jor Bagh Road,  
Aliganj, New Delhi-110003  
Website: moef.nic.in

D.O. No. 17012/21/2013-CPW Dated the 15.07.2015

To,

The Chief Secretaries of All States/UTs (as per list enclosed)

**Sub: NGT O.A. No. 318/2013-Rajendra Singh Bhandari Vs. State of Uttarakhand & Ors. Apex level appointments in the SPCBs-reg.**

Sir,

The Hon'ble NGT while hearing O.A. No. 318/2013-Rajendra Singh Bhandari vs. State of Uttarakhand Ors. On 22<sup>nd</sup> May, 2015 has asked the Ministry to file an affidavit taking clear stand in the matter of Apex level appointments in the SPCBs in



the light of Hon'ble Supreme Court of India appointed monitoring committee.

2. It has been observed that instructions issued vide letter no. 23-8/2HSM dated 16.08.2005 which stipulates that appointments of the Persons of proper knowledge and experience as well as possessing scientific and technical qualification for manning these senior posts are not being followed in letter and spirit. This has attracted litigation and invited severe criticism in the court of law. The copy of instructions are again enclosed with the advice that the guidelines envisaged in the said letter should unscrupulously be followed and this Ministry be informed of the action taken in the matter at the earliest.

3. A copy of this communication with enclosure is also being endorsed to Chairperson CPCB with a request that CPCB should ensure compliance of the instructions.

With regards,

Yours sincerely

(Dr.Rashid Hasan)  
Adviser (CP)

Encl: as above

(Copy of letter no. 23-8/2, HSMD Vo. II)

108. In compliance of order dated 17.08.2015 passed by the Tribunal in the present Original Application, a meeting was held under the Chairmanship of the Advisor (C.P) for evolving standard criteria on qualification and experience of the Chairpersons/Member Secretaries/ Member of the State Pollution Control Boards, Pollution Control Committees on 21.08.2015. It

was resolved in the meeting that 4 weeks time will be required to work out the model guidelines form the subject for submission before the Tribunal and the Government counsel was asked to make a request before the Tribunal accordingly. Minutes of the meeting dated 21.08.2015 reads as under:

The background of the meeting is that the Hon'ble NGT passed an order on 17th August, 2015 in the matter of Rajendra Singh Bhandari Vs. State of Uttarakhand &Ors (O.A No. 318/2013). The text of the order is reproduced below.

“In the meanwhile, we grant last opportunity to MoEF and CPCB to hold a joint meeting and place on record its Affidavit as to the qualifications which Chairman, Member Secretary and Members of the State Board should possess along with the experience. They will clearly state as to what is their understanding of the relevant provisions of the Act and Rules framed thereunder and order of the Hon'ble Supreme Court of India and circular issued by MoEF”.

In compliance of the above order a meeting was chaired by Dr. Rashid Hasan, Advisor, CP on 21<sup>st</sup> August, 2015 at 4:30 P.M in the chamber 2<sup>nd</sup> Floor, Prithvi Level-II, Zor Bagh Road, Indira Paryavaran Bhawan, Jor Bagh, New Delhi. The following was present:

**MoEF & CC and CPCB**

1. Dr. Rashid Hasan-In Chair
2. Dr. A.B Akolkar-Member Secretary, CPCB
3. Shri. N.A Siddiqui-Deputy Secretary
4. Shri Ashwini Kumar Tiwar-Legal Assistant

**Counsels**

5. Shri. S.I Gundli-Senior Law Officer, CPCB
6. Shri Raj Kumar-Counsel for CPCB
7. Shri Vikas Malhotra-Counsel for MoEF & CC
8. Ms. Alpa Poddar-Counsel for CPCB

The under mentioned points emerged out of the discussion:

(1) The members in the SPCBs/PCBs are required to be appointed strictly as per the provisions of the Section 4(2) of the Water (Prevention & control of Pollution) Act, 1974. The terms and conditions of Members have been described in Section 5 of the Act. Therefore, there is no room for any relaxation in the matter of appointment of Members and they are required to be appointed strictly as per the stipulations/provisions laid down in the Act. SPCBs/PCCs must strictly adhere to these provisions.

(2) The Section 4(2) (a) of the Act provides for 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. Further, Section 4(2) (f) of the Act provides for 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.

(3) It has been observed that the concerned State Governments/UT Administration themselves make appointment to these two posts and Hon'ble Tribunal has noted appointment to these posts are often without due consideration of the practical knowledge, qualification and experience of pollution control related matters.

(4) It was felt that the Central Pollution Control Board (Member-Secretary, Terms and Conditions of Service and Recruitment) Rules, 2012 notified vide GSR 840 (E) dated 22.1.2012 by the Central Government for appointment to the post of Member Secretary, CPCB is quite exhaustive and practically suitable for the post of Member Secretary in State Boards/Pollution Control

Committees. However, there is a need to examine their applicability in the SPCBs/PCCs.

(5) The Central Government has also notified the Central Pollution Control Board (Qualifications and other Terms and conditions of service of Chairman), Rules, 2015 for the recruitment of the post of Chairman of CPCBs vide notification G.S. R 221 (E) dated 23<sup>rd</sup> March, 2015. The said rule with suitable modifications could be adopted by the SPCBs/PCCs. The details will be provided in the guidelines.

(6) The Member Secretary, CPCB stated that he will formulate draft guidelines for the purpose of inclusion in the affidavit to be filed before the Hon'ble NGT. These guidelines can be considered by the SPCBs/PCCs for the adoption for appointment for the post of Chairman and Member Secretaries in the State Pollution Control Boards/PCCS.

(7) It was unanimously felt that this being a complex issue, at least 4 weeks time is required to work out the model guidelines on the subject for submission before the Hon'ble Tribunal. MS, CPCB will work out these guidelines by 11<sup>th</sup> September, 2015.

(8) Accordingly the Govt. Counsel, Shri Vikas Malhotra will submit a request to the Hon'ble NGT and seek time for formulation of guidelines and placing before the Hon'ble NGT within 4 weeks.

(9)

The meeting ended with a vote of thanks to the chair.

109. **CAG in its Audit Report of State of Sikkim**, 2015 had taken note of the appointment of Chairperson and Member Secretary of Pollution Control Board in para 5.3.21.2, and it had observed that State Pollution Control Board was headed by the persons not having pre-requisite qualifications and under such standards management aspects of pollution control and understanding of the pollution related complexities of modern science and technologies remained questionable.

The report reads as under:

#### 5.3.21.2 *Appointment of Chairperson and Member Secretary*

As per the Section 4.2(a) and (f) of Water (Prevention and Control) Act 1974 and section 5.2 (a) and (f) of Air Act 1981, the Chairperson of the Board should have qualification and special knowledge or experience in respect of matters relating to environmental protection or he should be a person having knowledge or practical experience in administering institutes dealing with environmental matters. He is to be nominated by State Government. Similarly, the Member Secretary (MS) should possess qualification, knowledge and experience of scientific, engineering and management aspects of pollution control and he is to be appointed by the State Government. Further, it was seen that the MoEF, as directed by the Supreme Court Monitoring Committee (SCMC), requested (16 August 2005) the Chief Secretaries (CS) of all States for filing affidavit taking clear stand in matter of appointments of the Chairperson and MS in the State Boards on the directions issued by the SCMC. As per the directions of SCMC, the Chairperson of the Board should be individual with a sense of vision and a feeling for future and they must have an understanding of the complexity of modern science and technology since they will be dealing with highly technical issue. Similarly, the MS was required to be full timer and should possess a post-graduate degree in science, engineering or technology and have adequate experience of working in area of environment protection. Finally, it was instructed that only technically qualified professionals should be appointed to the critical positions of Chairperson and MS, so that their functioning could be strengthened as required in terms of paragraph 41.1 of Supreme Court's order dated 14<sup>th</sup> October, 2005.

However, it was seen that the Chairperson as well as MS did not possess above mentioned requisite qualification. The Chairman was a public representative having qualification of BA, whereas the MS possessed the qualification of B.Sc. Further, the MS

was not a full timer as he also looked after functions of other wings of FEWMD.

Hence, the SPCB was headed by the people not having pre-requisite qualifications and under such circumstances, management aspects of pollution control and understanding of the pollution related complexity of modern science & technology remained questionable.

110. A glaring example of incompetent persons appointed to the post of Chairman of the Pollution Control Board is from State of Jharkhand which came to surface in the case of **Binay Kumar Sinha Vs. State of Jharkhand**, decided by the Ld. Division Bench of Jharkhand High Court on 15.05.2002 (2002 (50 BLJR 2223)] the relevant facts of the case are given in para 4 and 5 of the judgement which are as follows:

*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.

After detailed consideration of the facts as to how an incompetent person was appointed to the post of Chairperson, State Pollution Control Board, under the relevant provisions of law and the manner in which the

concerned authorities of the State including the Secretary of the department concerned had acted irresponsibly, observation of the Ld. Hon'ble High Court came in para 38 of the judgment and it was made clear in para 41:

*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.”*

111. After issuance of notices to other States and Union Territories, during the course of hearing, the Tribunal had asked them to file their responses in relation to qualifications of Chairman and Member Secretary of their respective Pollution Control Board. Thereafter, the information so received was extremely surprising as many of the Chairman and Member Secretary in various States/Union Territories were nominated even though they were not even having Science background much less to say, having knowledge of the subjects relating to Environmental Sciences. Such like cases in some of the States/Union Territories are given here under:



## 1. State of Punjab

Sl. No.	Name/designation of the Chairman and other Member of the Board	Description of the Membership	Qualification and Experience
1.	Mr. S. Manpreet Singh Chhatwal, IAS	Chairman Punjab Pollution Control Board, Patiala	B.Com. and Associate Member of Chartered Accountants of India

## 2. State of Sikkim

Sl. No.	Name/designation of the Chairman and other Member of the Board	Description of the Membership	Qualification and Experience
1.	Smt. Kalawati Subba	Chairperson of State Pollution Control Board of Sikkim State w.e.f 25 <sup>th</sup> May, 2015	<b><u>Qualification-M.A Experience/Knowledge</u></b> She is the Former Speaker of Sikkim Legislative Assembly and also served as the Minister, Animal Husbandry & Veterinary Services & Food Civil Suppliers & Consumer Affairs.
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5.	Shri T Gyatso Bhutia (SFS) Director of Forest	Member Secretary, State Pollution Control Board.	<b><u>Qualification-</u></b> Passed all India Higher Secondary (Class-XI Science) from Tashi Namgyal Higher Secondary School, Gagtok.  Pre-University(PU-Science) Examination from St. Anthony's

			<p>college, under North Eastern Hill University, Shillong (Meghalaya)</p> <p>B. A. From University of North Bengal.</p> <p>Completed two year Rangers Training Course in Forestry and Allied Subject from Eastern Forest Rangers College (EFRC). Kurseong, West Bengal.</p>
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### 3. State of Uttar Pradesh

The details of qualification of the Chairman are given as under:-

**Name:** Syed Javed Abbas

**Education Qualification:** Post Graduate

**Personal information:-** “I have been active in grass root politics for the last twenty years. During this period of active politics, I have led various groups addressing the social concerns and causes.

Was part of activities, demonstrations on various local social issues like:

- Labour related problems
- Environmental issues
- Green Peace activities

- Law & Order related issues,
- Illegal excavation related to sand mining
- Increasing river pollution

#### 4. State of Karnataka

##### CHAIRMAN:

Sl. No	Designation of the Chairman and other member of the Board	Designation of the Membership	Qualification and experience
1	Dr.Ayi Vaman Narashinh Acharya	Chairman	<p>MBBS As Medical Practitioner in the Tribal areas in Sahyadri Western Ghats.</p> <p>Gained rich experience about health needs of the Tribals and their Natural Environment Participated in several Environment activities like save Western Ghats Movement etc., Conducted several programmes/ workshops on Bio-Fuels</p>

## MEMBER SECRETARY:

Sl. No	Designation of the Chairman and other member of the Board	Designation of the Membership	Qualification and experience
1	Shri Vijayakumar, IFS	Member Secretary, KSPCB	M.Sc. (Agr)

## 5. State of Tamil Nadu.

The Principal Secretary, Environment and Forest Department of **State of Tamil Nadu** has filed an affidavit. The information with regard to qualification and experience of Chairman and Member Secretary of State Pollution Control Board is as under:-

Name of the Chairman	Designation	Qualification
Mr. K. Skandan, IAS	Additional Chief Secretary/ Chairman, Tamil Nadu Pollution Control (Full Time Chairman	M.A (Political Science) Madras University M.A (Rural Development Planning) University of East Anglia, U.K. Bachelor of Law Madras University

## 6. NCT Delhi

Name	Designation of the Membership	Qualification
Sh. Kulanand Joshi, DANICS (1991 Batch)	Member Secretary, DPCC	M.A (Political Science), University of Meerut. Graduation,

		University of Garhwal, (Economics, History and Political Science).
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## 7. State of Rajasthan.

On behalf of **Rajasthan** Pollution Control Board, an affidavit has been filed by Sr. Environmental Engineer (textile) in respect of Chairman of the State Board, namely, Smt. Aparna Arora (IAS). The qualification and experience are as under:-


Name	Designation of the Membership	Qualification
Smt. Aparna Arora (IAS)	Chairperson	M.A (Political Science)

Particulars of the Member Secretary of the Rajasthan State Pollution Control Board are as follows:-

### Educational Qualification

Name	Designation of the Membership	Qualification
Shri K.C.A. Arun Prasad, IFS	Member Secretary, RSPCB	B.Sc (forestry) M.Sc. (forestry) Post Graduate Diploma in Wildlife Management


## 8. State of Andhra Pradesh

Name	Designation of the Membership	Qualification & Experience
Dr. G. N. Phani Kumar	Chairman 	M.A (Political Science) Ph.D. Deputy Director General, in the Environment Protection and Research Institute (EPTRI) Hyderabad.

Name	Designation of the Membership	Qualification & Experience
Shri I. Y. R. Krishna Rao (IAS),	Chief Secretary	M.A. (Economics) and M.Sc. (Agriculture).

## 9. State of Puducherry

Name	Designation of the Membership	Qualification & Experience
Chairman	Dr. V. Candavelou	Master of

		Veterinary Science, M.A in Development Studies (specialization in public policy & management) and L.L.B.
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#### 10. State of Telengana

<b>Name</b>	<b>Designation of the Membership</b>	<b>Qualification &amp; Experience</b>
Chairman	Shri Rajiv Sharma, IAS who is also Joint Secretary of State Government.	M.A., Ph.D & L.L.B

112. Despite of clear provisions of law; judgment passed by the Hon'ble Supreme Court; guidelines by the Monitory Committee constituted by the Supreme Court; directions from time to time, issued by the Central Government and perusal of the record reveals that in respect of the qualifications of the persons, barring a few exceptions, who were being appointed by the State Governments did not show much improvement. By and large situation remained

the same which substantially affects the working of the State Pollution Control Boards and is resulting in degradation of environment protection and scanty control over pollution. Hence, the present issue was taken up by the Tribunal and all the persons concerned including Union of India, through MoEF, Central Pollution Control Board, State Pollution Control Board of all the States of the country, Union Territories were called upon and they heard at length.

113. At the outset it would be appropriate to consider the objections raised by the respondents with regard to the jurisdiction of this Tribunal to adjudicate the present controversy as well as the question of limitation in filing this application. The said grounds raised by the respondents has no substance and deserves to be rejected. The reasons are very simple that the primary question raised by the petitioner in the instant application is with regard to the qualification/eligibility for nomination/appointment of Chairman and Member Secretary of the State Pollution Control Board.

The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981, in Chapter II, makes provision in respect of constituting Central and State Boards for prevention and control of water and air pollution. Under Section 4 of the



Water Act and Section 5 of the Air Act, it has been specifically given about the constitution of the Board. Further, it provides with regard to Members who will constitute the Board including Chairman and full time Member Secretary. Sub Section 2 of the Section 4 and Sub Section 2 of Section 5 of the Water Act, 1974 and Air Act, 1981, respectively gives out about the eligibility/qualification of a Chairman/Member Secretary including the knowledge, experience etc. which one has to possess for being appointed on the said posts.

114. The jurisdiction and powers of the Tribunal has been given under Chapter III of the National Green Tribunal Act, 2010. Sub Section 1 of the Section 14 provides the jurisdiction of the Tribunal, inter alia, the questions which arises out of the implementation of the enactments specified in Schedule I of the Act. Schedule I of the Act includes the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. Therefore, in the instant case the question which has come up for consideration before the Tribunal is in respect of the provisions and implementation of the Water Act and Air Act to which, it has the jurisdiction to adjudicate on the question involved herein. Secondly, the SLP (6023 of 2006) was dismissed on the ground that the applicant contesting the application could not proceed on

account of his inability, ill health and lack of resources, therefore, the SLP was not decided on merits and the jurisdiction of this Tribunal has been rightly invoked as there are illegality in constitution of State Board. Moreover, when the Applicant had first approached the High Court of Uttarakhand, he was directed to proceed before the Tribunal. Consequently this Original Application had been filed before the Tribunal.

So far as question of limitation is concerned, it would suffice to say that the grievance of the petitioner that appointment of Chairman and Member Secretary made by the respondent is not in consonance with the provisions of the Water Act and Air Act and the same is still continuing in the same manner even now. In such view of the matter the present case is a one of recurring cause of action and as such the instant application is very much within limitation.

115. So as to know the true purport of the abovementioned provisions, we may take note of the settled principles of Law in this regard. Interpretation of a statute has to be in a manner that is simple and has plain meaning which subserves. Further, the objects and purpose of the statute must be adopted.

116. In the case of **Seaford Court Estate Limited V/s Asher (1949) 2 All ER 155**, 164, Lord Denning said:

Wherever a statute come up for a consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity....(A) judge, cannot fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed, to remedy, and **then he must supplement the written word so as to give** “force and life” to the intention of the legislature.... put into homely metaphor, it is this; A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? **He must then do as they would have done.** A judge should not alter the material of which Act is woven, but he can and should iron out the creases. (Emphasis added)

117. Hon’ble Supreme Court has in the case **M/s Girdhari Lal and Sons V. Balbir Nath Mathur** (1986) 2 SCC 237 held as under:-

“6. It may be worthwhile to restate and explain at this stage certain well-known principles of interpretation of statutes: Words are but mere vehicles of thought. They are meant to express or convey one’s thoughts. Generally, a person’s words and thoughts are coincidental. No problem arises then, but, not infrequently, they are not. It is common experience with most men, that occasionally there are no adequate words to express some of their thoughts. Words which very nearly express the thoughts may be found but not words which will express precisely. There is then a great fumbling for words. Long-winded explanations and, in conversation, even gestures are resorted to. Ambiguous words and words which unwittingly convey more than one meaning are used. Where different interpretations are likely to be put on words and a question arises what an individual meant when he used certain words, he may be asked to explain himself and he may do so and say that he meant one thing and not the other. But if it is the legislature that has expressed itself by making the laws and difficulties arise in interpreting what the legislature has said, a legislature cannot be

asked to sit to resolve those difficulties. The legislatures, unlike individuals, cannot come forward to explain themselves as often as difficulties of interpretation arise. So the task of interpreting the laws by finding out what the legislature meant is allotted to the courts. Now, if one person puts into words the thoughts of another (as the draftsman puts into words the thoughts of the legislature) and a third person (the court) is to find out what they meant, more difficulties are bound to crop up. The draftsman may not have caught the spirit of the legislation at all; the words used by him may not adequately convey what is meant to be conveyed; the words may be ambiguous: they may be words capable of being differently understood by different persons. How are the courts to set about the task of resolving difficulties of interpretation of the laws? The foremost task of a court, as we conceive it, in the interpretation of statutes, is to find out the intention of the legislature. Of course, where words are clear and unambiguous no question of construction may arise. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the real basis of the so-called golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them. A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature to others as well as judges. Intention of the legislature and not the words is paramount. Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there, is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world.

7. Parliamentary intention may be gathered from several sources. First, of course, it must be gathered from the statute itself, next from the preamble to the statute, next from the Statement of Objects and Reasons, thereafter from parliamentary debates,

reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too.

8. Once parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the court to give the statute a purposeful or a functional interpretation. This is what is meant when, for example, it is said that measures aimed at social amelioration should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several un contemplated forensic situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the “primary situation”. It will then become necessary for the court to impute an intention to Parliament in regard to “secondary situations”. Such “secondary intention” may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation.

9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.”

118. Coming back to the constitution of the State Board under Water Act, 1974 for nominating a Chairman, the expression “Special Knowledge” or “Practical experience” have neither been defined nor been directly explained in the Water Act. Yet these phrase are of vital importance, in as much as they

pertain to nomination of the Chairman of the State Board. Indeed, special knowledge or practical experience have vast generic usage, and therefore must be inferred according to context in which it is being used or has been used.

119. It would be note-worthy to mention here the provisions in some other statutes, using same expressions in respect of qualification of a Member:

### **The Competition Act, 2002**

#### **8. Composition of Commission.-**

1. The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government : Provided that the Central Government shall appoint the Chairperson and the Member during the first year of the establishment of the Commission.

2. The Chairperson and every other Member shall be a person of ability, integrity and standing and who, has been, or **is qualified** to be, a judge of a High Court, or Has **special knowledge of, and professional experience** of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission.

### **3. The Press Council Act, 1978**

#### **S 5. Composition of the Council-**

(c) three shall be persons having **special knowledge or practical experience in respect** of education and science, law and culture of whom respectively one shall be nominated by the University Grants Commission one by the Bar council of India and one by the Sahitya Academy;

120. A plain reading of the provisions of Section 4(2)(a) of the Water (Prevention and Control of Pollution) Act 1974 requires that a person who have:-

Special Knowledge

Or

Practical experience

in respect of matter relating to environment protection

Or

Person having knowledge and experience in administering institution dealing with matters aforesaid, to be nominated by the State Government

The **Air Act, 1981**, provides under Section 5(2) that a **Chairman** should be a person having:-

Special Knowledge

Or

Practical experience

in the matters relating to Environmental protection

to be nominated by the State Government.

In view of the aforesaid provisions of the Air Act, there are only two primary conditions of eligibility for being nominated as chairman namely special knowledge or practical experience in respect of matter relating to environment protection.

121. In order to consider the meaning of the aforesaid two phrases used by the legislation namely Special Knowledge and

Practical Experience, we may first look into its literal meaning in accordance to dictionary.

According to the **21<sup>st</sup> Century Dictionary** (Edition 2000), the word:

Special means “distinct form and usually better than others of the same or a similar kind; not ordinary or common; particular.

**Black’s Law Dictionary** (6<sup>th</sup> Edition) defines:

Special as unusual; extraordinary;

**Law Lexicon** defines:

Special as exceptional in character quality or degree

**Oxford Dictionary** gives the meaning of the word:

Special as better, greater or otherwise different from what is usual; exceptionally good.

Knowledge, according to **21<sup>st</sup> Century Dictionary**, is fact of knowing, awareness, understanding, the information one has acquired through learning, specific information about the Subject.

**Oxford Dictionary** gives the meaning of:

Knowledge as information and skill acquired through experience or education. Theoretical and practical understanding of the subject.

**Black’s Law Dictionary (6<sup>th</sup> Edition)** defines:



Knowledge as acquaintance of fact and true the fact of knowing and understanding

The word practical is defined by **21<sup>st</sup> Century Dictionary** as:

Concerned with or involving action rather than theory put to practical use. Capability of being effective in factual use, a practical lesson or examination. eg. In a scientific subject.

Practical, in accordance to **Oxford Dictionary** is:

Actual doing or use of something rather than with theory and ideas. theories and procedures learned which applied to actual making or doing of things.

**Oxford Dictionary** defines experience as:

Practical contact with and observation by fact or events, Knowledge or skill acquired by such means overtime specially that gain in a particularly profession.

So far as experience is concerned, it means according to **21<sup>st</sup> Century Dictionary**:

Practice in an activity, knowledge or skill gained through practice. To have practical acquaintance with something.

As per **Black's Law Dictionary (6<sup>th</sup> Edition)**:

Experience is a state, extent of duration of being engaged in a particularly study or work; the real life is contrasting with ideal or imaginary, a work implying skill, facility or practical wisdom

given or personal knowledge feeling of action and also course of process by when one attains knowledge or wisdom.

122. The aforesaid meaning of the word/phrase used in the water Act as well as in the Air Act, boils down that the Special knowledge is where the information one acquires through learning which is exceptional, in greater quality and degree. It can be said to mean knowledge which is surpassing, distinguishing and exceptional in nature and is derived through rigorous study or research over a reasonable period of time, in the field of matters relating to environment.

Therefore, any person with knowledge which is ordinary or casual in respect of environmental matters will not qualify or become eligible in respect of appointment under consideration. Knowledge, qualified with the word special, has to be acquired through accepted and established norms of education i.e. an academic qualification in the field of environmental protection as recognized by university established by law.

123. In our country, to name a few, such specialized courses are:

- (a) Criteria in civil/chemical with specialization in environmental engineering.
- (b) Post-graduate in environmental engineering/environmental management
- (c) 4 years graduate in environmental engineering

(d) 2 years MSc in environment science/environmental management.

Though it has not been specifically mentioned in the aforesaid provisions that basic academic qualification in environmental protection is required, the words special knowledge taken within its ambit such requirement as the legislature cannot be presumed to be oblivious of existence of such basic qualifications.

124. Practical experience means knowledge gained through practice after putting it to practical use. It is a practical learning in a scientific subject. A person having practical experience in respect of matters relating to environmental protection be considered by the State Government for being nominated as Chairman of the State Board.

The provisions of Section 4 of the Water Act envisage that a person who has practical experience in matters relating to environment could discharge the functions contained under section 17 of the Water Act. According to the Act persons having surpassing, distinguished and exceptional knowledge or practical experience in respect of matters relating environmental protection is a requirement for being nominated as Chairman.

125. Regarding the third limb of the aforesaid provision for being nominated as Chairman under the Water Act, where a

person is having Knowledge and experience in administering institutions dealing with the matters aforesaid, it can be held that the word knowledge and experience mentioned here is also having same meaning, as referred to above. The Knowledge and experience in administering institutions, does not means that by virtue of a person having an experience in administration of an institution relating to environmental protection that he becomes eligible. Such a person is first to have knowledge and experience in administering institutions dealing with matter of environment, then alone he can be said to be eligible. The focus in this category is on combined set of capabilities derived from both “knowledge’ as well as “experience’ in administering institutions dealing with matter relating to environment protection.

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 Statue and is pari materia to the

Water Act has 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

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.

128. Section 5 (9) and 5 (12) of the Water Act and Section 7 (7) and 14 (1) of the Air Act provides that the term and conditions of service of Chairman and Member Secretary, respectively, shall be such as may be prescribed by the rules to be framed by the State Government. The rule making powers of the State Government are specifically conferred under Section 64(2) (e) of the Water Act and Section 54(2) (f) of the Air Act.

The word 'shall' as appearing in Section 5(9) and 12(1) of the Water Act and 7(7) and 14(1) of the Air Act casts an obligation on the States to frame such Rules as may be deemed appropriate. In other words, framing of rules by the State Government has been mandated by the legislature, by using the word 'shall'. In so far as the word 'may' used in the said provision, confers power on the State Government to frame such rules as if it means 'must'.

129. A large Bench of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh vs. Jogendra Singh**, AIR 1963 SC 1618 had held as under.

“....there is no doubt that the word ‘may’ generally does not mean ‘must’ or shall. But it is well settled that the word ‘may’ is capable of meaning ‘must’ or ‘shall’ in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word ‘may’ which do not denotes discretion should be construed to mean a command. Sometimes the legislature uses the word ‘may’ out of deference to the high status of the authority on whom the power of the obligation are intended to be conferred and imposed....”

130. As back as in the year 1965, a Constitutional Bench of the Hon'ble Supreme Court had, in the case of **Sardar Govind Rao & Ors Vs. State of M.P** (AIR 1965 SC 1222) held that the word ‘may’ can be read as ‘must’:

“.... The word ‘may’ is often read as ‘shall’ or ‘must’ when there is some thing in the nature of the thing to be done which makes it the duty of the person on whom power is conferred to exercise the power...”

131. It is rather strange to see that none of the States, barring a few, have followed the mandate of the Act to frame Rules so as to lay down the conditions of eligibility of appointment of the two posts i.e. Chairman and Member Secretary. In fact such State Governments have totally failed in their statutory duty and obligation cast on them to frame the Rules, as aforesaid.

132. In view of the pollution of rivers and streams as a result of growth of industries and increase in urbanization which made

it necessary to protect drinking water, a committee to draft enactment for prevention of water pollution was set up and it had recommended, inter-alia, to establish Water Pollution Prevention Board with necessary complement of technical and administrative staff to confer on them such powers as necessary to effectively deal with the problems of water pollution. It had also reconsidered the penalties on contravention of the provisions of the Act. Thereafter the Water Act was promulgated in the year 1974 to provide for the prevention and control of water pollution and the maintaining or restoring of the wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Board for the prevention and control of water pollution; for conferring on and assigning to such Board powers and functions relating thereto and matters connected therewith.

133. It was with the aforesaid object that the State Board was to be constituted which was given the status of body corporate, function perpetual succession and a common seal with power, subject with provisions of the Act, to acquire, hold and dispose of property and to contract and may by the said name sue or sued.

134. Such Board was to have a Chairman. The Chairman was to exercise such powers and perform special duties as may be prescribed under the Act or as may, from time to time be delegated to him by the Board. Thus heavy responsibility lies on the Chairman of the Board which he has to execute for control of



water pollution and the maintaining or restoring of wholesome of water. Under Section 17 the functions of the Board, of which Chairman has the responsibility, has been enumerated for planning a comprehensive programme for prevention, control or abatement of pollution of streams and wells in the state and to advise the Government and in matter concerning water pollution. Board is to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof. It has to encourage, conduct and participate in investigation and research relating to problem of water pollution and to collaborate with Central Board in organising the training of persons engaged in programmes relating to prevention, control or abatement of water pollution and also to organise mass educational programmes.

135. The Board is to inspect sewage and trade effluent or works and plants for the treatment of the same and to review plans, specifications or other data relating to it for the treatment of water, works for the purification and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent under the Act. The Board is to lay down, modify or annul effluent standards for the sewage and trade effluents and quality of receiving waters resulting from the discharge of effluents. The Board is to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and

water resources of different region. It is also to evolve method for utilisation of sewage and suitable trade effluents in agriculture and efficient methods of disposal of sewage and trade effluents on land.

136. Standards are to be laid down for treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents. The Board is to make, vary or revoke any order for the prevention, control or abatement of discharges of waste into streams or wells and requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution.

137. It has to advise the State Government with respect to the location of any industry, the carrying on of which is likely to pollute a stream or well. The Board has to perform such other functions as may be prescribed and entrusted to it by the Central Board or the State Government. The Board may establish or recognise a laboratory to enable the Board to perform its functions in respect of the aforesaid matters including the analysis of samples of water from any stream or of any sewage or trade effluents.

138. The State Board also has power in respect of obtaining information, taking samples of affluent, refusal or withdrawal the consent for establishment of any industry, operation or process or treatment and disposal system or extension or addition thereto. It has powers of emergency measures in case of pollution of stream or well. It also has powers to give directions to any person, office or authority who shall be bound to comply with it. Failure to comply with the directions makes the concern liable for penalties.

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.

140. Another question which is to be considered in this Original Application is with regard to appointment of **Member Secretary of the State Board**. It is the case of the Applicant that

the Member Secretary appointed by the State Board do not fulfill the eligibility criteria and as such the appointment is illegal for being contrary to the relevant provisions of the Law.

141. Water Act 1974, Section 4(2)(f), provides as under:-

“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.”

The Air Act 1981, in Section 5(2)(f), provides the eligibility for a person to be appointed as Member Secretary.

Section 5(2)(f) reads as under:-

“A full-time member-secretary having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Government.

142. The case of the applicant is that the knowledge and practical experience of even the officers who are members of Indian Forest Service, in implementation of Forest Conservation/Wildlife Protection/Bio-Diversity Act, which is only 10% of the total environment, cannot fulfil the requisite professional knowledge or expertise of environment as required under Water Act, Air Act and Rules made therein. Further the applicant has stated that rehabilitation and rebuilding of infrastructure is being planned and executed by IAS/IFS officers of administrative and Forest background only and are taking

decision on environment without having any practical experience in that field.

According to the applicant the Member Secretaries in the State Board are frequently nominated on part time basis and not for full term. None of the full time Member Secretary are allowed to complete their tenure of three years. Those who are being appointed on deputation from different department for a term of 3 years are repatriated to their parent department before completion of the tenure and thereafter Secretary, Environment and Forest of the Government takes over the charge as part time Member Secretary. The State Government are only making part time arrangement instead of permanent Member Secretary, for their ulterior motives. An example of State of Uttarakhand have been cited by the Applicant where a Member Secretary, who was an IFS officer of the State Government, had been transferred to State Board from Uttarakhand Van Vikas Nigam and was not appointed by an open selection process as required under the Water and Air Act.

143. A bare look to the Provisions of Water Act as extracted above, relating to the Member Secretary goes to show that he has to be a full time Member. He is to possess qualification, knowledge and expertise in science, engineering or management aspects of pollution control. In other words legislature has laid emphasis on the qualification, knowledge and experience in

science and engineering aspect which are related to pollution control. Therefore, appointment of Member Secretary on part Time basis or who are recalled before completion of three years of tenure cannot be said to be in accordance with law. Further, when an officer like Secretary, Environment and Forest of the Government takes over the charge from the Member Secretary, who has not been allowed to complete the term of 3 year, is also contrary to Law.

The Air Act, also provides similar provision in respect of eligibility for appointment of the Member Secretary and that he has to be appointed on full time basis. In other words the person to be appointed as Member Secretary should have qualification, knowledge and experience of scientific, engineering or management aspects of pollution control.

Even if a Member Secretary is from Indian Forest Service, he does not fulfil the eligibility criteria for the purpose of environmental protection because under Forest Services only a part of relevant law such as forest, wildlife, etc. have been studied by them, whereas environment protection includes many other discipline/subjects. Comparison of the studies which are taught during the training of India Forest Service Officers at IGNFA & Graduate/Post Graduate in environmental streams would go to show that there is a vast difference, particularly in respect of subject of environment protection, its control and management. A

comparative chart as submitted by Applicant and not objected to by the respondent, is as under:-

**Comparison of an IFS Officer to Specialized Environmental Stream Graduate**

	<b>Indian Forest Service</b>	<b>Graduate/Post Graduate in Environmental</b>
Sl. N.	IFS Officer, Training Course at IGNFA	2 Years Post Graduate in Civil/Chemical with Specialization in Environment Engineering OR 2 Years Post Graduates in Environmental Engineering/Environmental Management or 4 Years Graduate in Environmental Engineering or 2 years M.Sc. in Environmental Science/Environmental Management.
1	During training of IFS officers at IGNFA, an IFS officer learned only Forestry subjects along with glimpse of environmental conservation in terms of forestry and not containing any subjects related to environment pollution & its control such as a) Water Pollution b) Air Pollution & c) Noise Pollution etc.	These graduates learned broadly pollution control technique of Air, Water, Water Waste, Solid & Hazardous Waste handling & Management, global warming, green technology, Designing of Effluent Treatment Plant, Water Treatment Plant & Plant & Air pollution Control Systems, Environment Impact Assessment along with multidisciplinary subjects.
2	IFS officers do not get any practical/lab/industry exposure in terms of environmental pollution & control during their training and service period. It is exception for all IFS officer who is	Beside this graduates/post graduates in above environmental streams also get exposure through practical/experiments in lab and industrial training related to environment pollution monitoring, protection and its control and Management.

	graduates/post graduates in specialized environmental streams.	
3	It is found that IFS officers (except graduates/post graduates in specialized environmental streams) are not suitable for any technical position in pollution control board but they are suitable for the post of member secretary of PCB which is very surprising.	Suitable for any technical position in pollution control board and for the post member secretary of PCB, which is very surprising..
4	As per Dr. Thyagrajan Supreme Court Monitoring Committee Suggestions an IFS officer not found suitable for the post of Member Secretary of PCB (except graduates/post graduates in specialized environmental streams)	These post graduates/graduates are suitable.
5	Score given as per knowledge of Environment subject knowledge is 1 out of 10	Score given as per knowledge of Environment subject knowledge is 9 out of 10.

From the above it is clear that the subjects taught and the study being done by a trainee of Indian Forest Service is only a part of Environment Studies and some more qualification in respect of studies and experience, etc. is required for a person so as to qualify for the post of Member Secretary of the Pollution



Control Board. Hence merely being a Member of Indian Forest Service or has retired from the said service is not the requisite qualification. If he is not a graduate or post graduate with Environment Studies and its protection as specialized subject, he is not eligible for the said post.

Therefore any person possessing eligibility other than mentioned above and is given charge for the remaining period where he is working as Member Secretary, is not permissible under law even if such person is having good qualification in other subject; experience in other field and is member of IFS or any other services. He cannot be appointed as Member Secretary as it would be contrary to the with relevant Act.

144. As regards the Members of State Pollution Control Board, Section 4 (2) (b) to (e) of the Water Act provides as under:

- 4 (2) (b) Such number of officials, not exceeding five to be nominated by the State Government to represent that government.
- c) Such number of persons, not exceeding five to be nominated by the State Government from amongst the members of the local authorities functioning within the State;
- 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.

Similarly, under the Air Act, Section 5 (1) to (e) also provides for nomination of the Members to the State Pollution Control Board, which reads as under:

5 (1) (b) such number of officials, not exceeding five, as the State Government may think fit, to be nominated by the State Government to represent that Government;

(c) such number of persons, not exceeding five, as the State Government may think fit, 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, as the State Government may think fit to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interest, which in the opinion of that 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.

In other words the official Members to be nominated by the State Government, to represent that Government, are not to exceed five; amongst the Members of the local authorities to be nominated by the State

Government are not to exceed five; the non-official Members to represent the interest of agriculture, fishery or industry or trade or labour or any other interest which in the opinion of the Government ought to be represented, are not to exceed three and two persons are to represent the companies or corporations owned, controlled or managed by the State Government.

It is noteworthy that the legislature in its wisdom has also provided under Air Act that not less than two of the Members are to be persons having special knowledge and practical experience in respect of matter relating to the improvement of quality of the air or the prevention, control or abatement of air pollution. This further gives us a clue that in respect of eligibility of the Member of the Board including under the Air Act, 1981, should also possess the requisite qualification.

But the State of Uttarakhand have nominated 11 Members of the State Pollution Board including the Chairman. All other 10 Members are nominated on the basis of their designation in the Government department or in the local bodies. There is only one Member who is said to be the representative of Uttarakhand Chamber of Commerce. Therefore, the Members nominated by the State of Uttarakhand are also not in accordance to law.

145. For the aforesaid reasons, we are of the considered view that the State Pollution Control Board, with growing industrialization and increasing urbanization, has high responsibility. The functions of the Board are enormous which relates to the essential items like water on which stands the very existence of human being.

The Chairman/Member Secretary/Member of such Board are to be appointed strictly in accordance with the letter and spirit of law. They are to fulfil the requisite eligibility criteria for the constitution and working of the State Board. Proper constitution and functioning the State Board is a matter of serious concern which should be taken up by the State Government with full responsibility so as to ensure its smooth functioning. This could only be done when State Boards are manned by persons with basic qualification in field of science relating to studies in environment, as defined under the Act.

146. The Water Act of 1974 do give the eligibility criteria under Section 4(2) (a). Similarly under Section 5(2) of the Air Act. The meaning of the words used there in can be summerized as under:

The first criteria of **“Special Knowledge”** for appointment of Chairman, as prescribed under Section 4 (2) (a) of the Water Act and Section 5(2) of the Air Act unambiguously means knowledge acquired through a well-designed special programme/course

based on topics pertaining to environment and its protection. The courses that would qualify to be imparting special knowledge in respect of environment, its degradation/pollution and environmental protection are available in the form of Master of Science in Environmental Science/Environmental Management and Master of Engineering/Master of Technology, in Environmental Engineering or an equivalent degree. So a person can be regarded to have special knowledge in environment and its protection only if he has to his credit either M.Sc. in Environmental Science/Environmental Management or M.E./M. Tech in Environmental Engineering or an equivalent degree. Special knowledge as explained above has to be accompanied with adequate experience in the field.

The other class contemplated under Section 4 (2) (a) and 5 (2) (a) of the Water and Air Act is relating to persons having **practical experience** which has been placed as an alternative to the above class of persons falling under special knowledge. Here the stress has been laid on actual experience. This would mean that a person with a basic knowledge and understanding of environment and its protection, which he might have obtained in the form of a Degree in Science, would be eligible for appointment if he has had actual experience in environmental protection. One has to understand that practical experience in environment protection can only be, when a person has degree in science so as

to have the basic knowledge and understanding of the subject. A person having practical experience in environmental protection and abatement of pollution, but without at least the basic knowledge and understanding of the environmental processes through degree in Science subjects, cannot be regarded as eligible for the said post. It is therefore quite clear that as a pre-requisite he must have at least basic knowledge, through degree in Science subjects, if not special knowledge, of the subject. And when we say subject, it means a subject which deals with environment and its protection or at least a component of environment and not any other subject. That leads us to hold that a person having practical experience must have a degree with Botany/Zoology/Chemistry or an allied subject wherein basic knowledge about ecology and environment are a part of the curriculum.

The third criteria “Knowledge and experience in administering institutions” dealing with matters of environment and its protection, also expects the incumbent to have a degree in Science subject and basic knowledge of environmental protection. This clearly indicates that the appointee under this category also needs to have a basic degree in Science with subject related to the environment and experience in the field.

From the above discussion, it may be concluded that three eligibility criterion have been given under law for appointment of

Chairman. They have the difference of degree of knowledge which a candidate would be possessing in special knowledge, qualifications like practical experience or knowledge and experience in administering institutions dealing with matter of environment when he qualifies for appointment of Chairman under either of the three criterion. Keeping in view the enormous responsibilities which lies, with the Chairman of the Pollution Board and the degree of technical aspect involved which has also been taken note of by the Hon'ble Supreme Court; Central Government; in the meeting of All India Ministers of Environment; recommendation made by the various committees constituted for the purpose etc, the appointment should be strictly in accordance with the criteria stated in the judgement.

147. The eligibility criteria laid down under the Air Act namely, special knowledge or practical experience is of the same character and quality as given under Section 4(2)(a) of the Water Act.

It is noteworthy that under the Air Act which came subsequently in the year 1981 and is *pari materia* to the Water Act has not provided for nomination of a person as Chairman who has experience in administering institutions dealing with environment.

This development of conscious deletion by the legislative is not without significance. This makes the criteria special knowledge or practical experience extremely important and imperative for State Government while nominating a person as Chairman.

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 persons should have gained such administrative experience but must possess graduation degree in Science subjects and basic knowledge of environment protection.

In the case of Member Secretary under either of the statutes, he should possess qualification, knowledge and experience of Scientific Engineering or Management aspects of Pollution Control as prescribed under the Act. In other words the expression Qualification has been used by the legislature only in relation to appointment of Member Secretary and not even for the Chairman. The emphasis on qualification thus necessarily mandates that a person to be appointed a Member Secretary must have the qualification i.e. Masters of Engineering, Technology, Environmental Engineering or allied Sciences where Pollution Control forms a component of the curriculum.

As far as the Members of the Board under the Act 1974 is concerned the legislature in its wisdom has not provided any qualification, experience or knowledge. However, under the Act of 1981 not less than two Members, to be nominated by the State Government, are to be persons having special knowledge or practical experience in respect of the matters relating to improvement of quality of air or prevention, control or abatement of air pollution. The categorisation of various classes which are to be nominated by the State or Central Government as the case may be, has been specified in Sub-section (b) to (e) of Section 4 (2) and 5 (2) respectively. The Members of the Board should be nominated within the prescribed limit and the number stated there under, without default and delay. Non representation of Members in the Board results in defeating the very purpose of legislation as the nominated Members who are statutorily required to be Members of the Board and participate in its business, are deprived of making their contributions in achieving the object of the respective Acts.

149. We have intentionally avoided to go into merit and demerit of the appointments individually. We had not given any Notice to show cause to the Chairman/Member Secretary of different Boards as to why their appointments be not cancelled or withdrawn. It is in these circumstances that we have left that matter in the domain of the State Governments to examine the

appointment of Chairman and Member Secretary of the respective Boards, in light of the statutory provisions and this judgement and then come to the conclusion as to where such appointments are liable to be set aside in accordance with law. If the competent Authority in the State Government comes to that conclusion then it must cancel/ withdraw the appointment of Chairman and/or Member Secretary as the case may and simultaneously takes steps for appointment of Chairman/ Member Secretary who are eligible to be appointed to these posts in accordance with the provision of the Act, criteria and guidelines stated in this Judgement. Their services should be dis-continued and appropriate notification including for new appointments be issued in accordance with the provisions of the respective Acts by the respective Governments within three months from the date of pronouncement of this Judgement.

150. Guidelines

After considering the issue involved in the present Original Application and before parting with this order we deem it appropriate to issue guidelines to the State Governments/Union Territories for future, so that State Pollution Control Boards, on which lies the heavy responsibility for preventing and controlling water pollution, functions smoothly:-

1. The State Governments/ Union Territories shall constitute the Pollution Control Boards strictly in accordance to Section 4 of the Water Act and Section 5 of the Air Act, and the eligibility criteria as aforesaid, for appointment of Chairman/Member Secretary of the Board.
2. The State Government is to ensure that the person manning the post of Chairman/Member Secretary of State Pollution Control Board are competent and eligible with requisite knowledge or practical experience in the field of environment protection and pollution control, with experience of management.
3. The appointment as a, Chairman or Member Secretary, should be of persons who are having special knowledge or practical experience or qualification in environment protection studies and not by virtue of their designation in service of the State Government like Chief Secretary, Principal Secretary, Environment Secretary or even Politician like former Speaker, Minister, M.L.A, all literary persons and non technical persons.
4. The State Government are to notify the rules under Water and Air Act expeditiously specifying the qualifications and experiences required for the post of Chairman/ Member Secretary. The post of Chairman/ Member Secretary should be advertised and thrown

open for all candidates irrespective of the fact whether they are in the Government, Academia or in private sector, so as to attract the best talent to man the said post.

5. The nominated Chairman/Member Secretary should have a fixed term of office which 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.
6. Once a person having requisite eligibility is appointed as Chairman/Member Secretary in the State Pollution Control Board, he is to continue for full tenure and the same is not to be curtailed by removal or by repatriated before its completion, unless there are charges of misconduct or cogent reasons which are to be placed on record. Completion of tenure as Chairman/ Member Secretary of the Board, not only gives security of service to the persons who are appointed but it is essential for efficiency of work and smooth functioning of the Board. A tenure unaffected by political and bureaucratic interference would be extremely important for the officials to function fearlessly and in accordance to the mandate of the legislation as given under relevant Environmental Protection Laws like Water Act, Air Act etc.

7. The State Government is to develop the infrastructure in the State Board by professional and technical officers who are efficient and competent to cope-up with increase of industries and development centres. They should ensure adequate manpower for the purpose of execution of provision of the relevant law.
8. The State Government should have latest equipped laboratories for analysis of samples of trade effluents etc.
9. The State Government is to ensure strict compliance of Section 8 of Water Act and Section 10 of the Air Act so that a meeting of the State Pollution Control Boards are held regularly and in accordance with law.
10. The State Governments and all concerned Authorities shall act in accordance with the directions contained in this judgement particularly paragraph 148 of the Judgment.
11. The State Government and all competent Authorities shall proceed to make appointment/ nomination of the Members of the Board as per categorisation and subject to the limitations of number provided under Section 4 and 5 of the Act of 1974 and 1981 respectively as expeditiously as possible, in any case not later than three months from the date of pronouncement of this Judgment.

With the above directions and guidelines, Original Application No. 318 of 2013 stands partially allowed however without any order as to costs.

....., CP  
(Swatanter Kumar)

....., JM  
(M.S.Nambiar)

....., JM  
(Raghuvendra S. Rathore)

....., EM  
(A.R. Yousuf)

....., EM  
(B.S Sajwan)

NGT