

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH

W.P.(C) No. 103 (AP) of 2017

Shri. Techi Tagi Tara,
S/o Lt. Techi Sokap,
resident of Village Totpu,
P.O/P.S Sagalee,
District- Papum Pare, Arunachal Pradesh.

.....**Petitioner**

-Versus-

1. The State of Arunachal Pradesh (to be represented by Chief Secretary) Government of Arunachal Pradesh, Itanagar.
2. The Principal Secretary-cum-PCCF, Govt. of Arunachal Pradesh, Itanagar.
3. Shri. T. Sitang Eko, Joint Secretary (E & F) Govt. of Arunachal Pradesh, Itanagar.
4. Shri. Kaling Moyang, Hon'ble MLA, C/o Secretary, State Legislative Assembly Naharlagun, P.O/P.S. Naharlagun, District Papum Pare, Arunachal Pradesh.

.....**Respondents**

**- BEFORE-
HON'BLE MR. JUSTICE S.SERTO**

For the Petitioner	: Mr. G. Tarak, Mr. T.Garam, Mr. S.Tada, Mr. L. Asha, Adv.
For the State respondents	: Mr. K.Ete, Sr. Addl. Adv. General.
For the respondent No. 4	: None appeared.
Date of hearing	: 24-08-2017
Date of judgment	: 28-08-2017

JUDGMENT & ORDER
(CAV)

1. This a writ petition challenging the impugned order dated 03.03.2017, issued by the Chief Secretary, Government of Arunachal Pradesh, removing the petitioner from the post of Chairman of Arunachal Pradesh State Pollution Control Board and replacing him with the respondent No.4 with immediate effect and until further orders.

2. The brief facts of the case are as follows;

The petitioner who was serving as Vice-Chairman of Arunachal Pradesh Agriculture Marketing Board was appointed as Chairman of Arunachal Pradesh State Pollution Control Board, in the public interest vide Order No. CAB/G-05/2014, dated 04.12.2015, issued by the Chief Secretary, Government of Arunachal Pradesh, in the rank of Minister of State with an honorarium of Rs. 50,000/- (Rupees fifty thousand) only per month and entitled to all perks and facilities, TA/DA on official tour at the rate as applicable to the Secretary of the State Government. While the petitioner was serving as such, the impugned order dated 03.03.2017, was issued by the Chief Secretary, Government of Arunachal Pradesh, relieving him from the post and at the same time appointing the respondent No. 4 in his place. Aggrieved by this order, the petitioner has come to this court challenging the same.

3. The main ground on which the petitioner is challenging the impugned order, as submitted by his learned counsel, is that the Arunachal Pradesh Pollution Control Board was constituted under "The Arunachal Pradesh, Water (Prevention & Control of Pollution) Rules, 2000", which was framed under the Central Act namely, the "Water (Prevention & Control of Pollution) Act, 1974". Therefore, the Chairman and members of the Arunachal Pradesh Pollution Control Board are appointed under the terms and conditions of service given under the section 5 of the Central Act, and as per the provision of the said section the terms of appointment of Chairman and members of the Board is 3(three) years. However, the Chairman or members of the Board can be removed before the expiry of their term of office by giving them a reasonable opportunity of being heard. But, in the case of the petitioner, he was not given a chance or opportunity of being heard as required under the said

provision of the Act, therefore, the impugned order was issued in violation of the provision of the Act. Hence, the same deserves to be quashed and set aside.

4. The learned counsel for the petitioner, Mr. G. Tarak submitted that though the appointment order of the petitioner as Chairman of the Pollution Control Board did not specify the term of his office since the Board was constituted under the relevant provisions of the Act and Rule, his appointment has to be presumed to have been made for the term as provided under such Act. Therefore, his appointment cannot be term as pleasure appointment and hence, he cannot be removed like those appointees who are appointed under pleasure appointment but only as provided under the Act.

The learned counsel in support of his submission cited the judgment of the Hon'ble Supreme Court passed in the cases given here below. Only the relevant portions of the cases cited are reproduced;

(i) **Union of India -versus- Shardinhu**, reported in **(2007) 6 SCC 276**.

"17. Learned Additional Solicitor General tried to support his submission on pleasure doctrine under Article 310 of the Constitution and submitted that the respondent has been appointed by the Central Government and therefore, it is the pleasure of the President to cut short his appointment. In this connection, learned ASG invited our attention to a decision of this Court in Union of India & Anr. v. Tulsiram Patel etc. [(1985) 3 SCC 398] especially to paragraphs 34 and 44. The distinction between statutory appointment and pleasure appointment has to be kept in mind. The pleasure appointments are such where the incumbents are appointed at the pleasure of the President, like Governors etc. As against this, statutory appointments are made under the statute and the service conditions of the incumbents are governed by the statute. They are not pleasure appointments. Governor appointed under the Constitution is purely pleasure appointment or appointment of such nature which the incumbent holds at the pleasure of the President or the Governors as the case may be. Such appointments may be cut short. Their Lordships in the aforesaid case have dealt with the distinction between the pleasure appointment and appointment under the civil services. Their Lordships held that in India the doctrine of pleasure appointment received Constitutional sanction under Article 310 but unlike in United Kingdom in India it is not subject to any law made by the Parliament but is subject to only whatever expressly provided by the Constitution. Therefore, the distinction has to be borne in mind, the doctrine of pleasure appointment as it existed in feudal set-up and in the democratic set-up.

Their Lordships discussed the doctrine of pleasure appointment in U.K. where the incumbent was appointed at the pleasure of the King but in India this concept has been adopted under Article 310 of the Constitution and how it is to be exercised has also been laid down in the Constitution. Therefore, the concept of pleasure doctrine cannot be invoked in the present case. Every appointment made by the Central Government is in the name of the President but by that it does not mean that all the appointments are pleasure appointments dehors the Constitution or statutory rules bearing on the subject. In the present case, the appointment made was of statutory appointment and the service conditions of the Chairperson and Members have been laid down, likewise their removal has also been laid down on incurring certain disqualifications. Therefore, the submissions of learned Addl. Solicitor General has no legs to stand.

(ii) Judgment passed by GHC in W.P.(C) No. 124(AP) 2016, in the case of **Sri. Tungri Effa –versus- State of Arunachal Pradesh & 2 Ors.**, order dated 10.08.2016,

“20. As discussed earlier, the post of the petitioner Sr. Tungri Effa (W.P.(C) No. 124(AP) 2016), to which post, he was appointed by the State Government, was a tenure post and immediately after his appointment as Chairman to the said post of 3 years, his service was terminated because of a blanket order issued by the Governor at the time of the proclamation of President’s Rule.

21. The removal of the said petitioner from the post of Chairman, in terms of the Articles of Association, as discussed earlier, is in violation of principles of natural justice as neither any notice as stipulated in Sub-clause 7 of the clause 14 of the Articles of Association, was issued to him, anything in lieu of his removal from the post of Chairman, was paid to the said petitioner.

22. As the appointment of the petitioner Sr. Effa was for a fixed tenure/term of 3 years from the date of his appointment vide letter dated 18.01.2016, therefore, as per the provisions of the Articles of Association, such appointment cannot be termed as appointment at the pleasure of the Governor.

23. The appointment of the said petitioner to the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., was also not conterminus as has been persistently argued by Mr. Tara, learned Addl. Advocate General, Arunachal Pradesh.

24. The said petitioner of W.P.(C) No. 124(AP)2016 was removed from the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., without following the rules and procedures as stipulated in the Articles of Association, and he was removed arbitrary against the principles of natural justice. No reasons, whatsoever, have been assigned by the State Government, while terminating the petitioner Sri. Tungri Effa’s service from the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., and situated

this, in the attending facts and circumstances of the case, the impugned termination order dated 17.02.2016 is liable to be set aside and quash”.

(iii) Radhika –versus- State of Assam & Another, reported in GLT 1997 (1) 344.

“6. We have heard the learned counsel on both sides.

7. Mr. N.M Lahiri, learned counsel assisted by Mr. C. Baruah, learned counsel for the appellant submits before us that the appellant-petitioner was made Chairman as per Annexure A while constituting the State Board under the Act and thereafter the Annexure order allowing him to hold charge is absolutely unwarranted and contrary to the provision of law. After constitution of the Board, the Chairman of the Board is to continue for a period of 3 years. However, under the provisions of the Act, a member or a Chairman may be removed from the Board in the manner prescribed. Fresh appointment by Annexure-C order dated 20.4.95 by which the period was reduced from three years as per section 5 of the Act, according to the learned counsel for the petitioner was illegal, without jurisdiction and contrary to the provisions.

8. Mr. PG Baruah, learned Advocate General, on the other has submitted that by Annexure-A notification only the Board was constituted and, thereafter by Annexure the petitioner was directed to hold charge. In fact, there was no appointment of the appellant as a Chairman of the Board until the Annexure-C notification was issued and this order of appointment was accepted by the appellant and therefore he was not competent to challenge the said appointment. Mr. Baruah further submits that the appointment after the constitution of the Board was in terms of section 4 and such appointment of the Chairman of the Board would be necessary and accordingly the order of appointment was issued.

9. On the rival contention of the parties, it is to be seen whether the Annexure-C order of appointment can sustain in law. Before we consider the aspect of the matter it will be opposite for us to look to some of the provisions of the Act.

10. Section 2(a) defines ‘Board’. As per the said definition, ‘Board’ means Central Board or a State Board. Central Board can be constituted in the manner prescribed under section 3. Section 4 envisages the procedure for the Constitution of State Boards. Sub-section (1) of section 4 of the Act empowers the State Govt to appoint or constitute a State Board. The section 4(1) is extracted below;

“4. (1) The State Government shall, with effect from such date as it may by notification in the Official Gazette, appoint, constitute a State 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.”

11. Under sub-section (2) of section of 4 a Board shall consist of the members mentioned in sub-section (2) (a) to (f). Sub-section (2) (a) deals with the requisite qualifications of the Chairman.

12. Except the Member-Secretary mentioned in section 4(2) (a) to (e) all the members including the Chairman are nominated by the State Government. Only the full time Member-Secretary as referred to in section 4 are to be appointed by the State Government. As per sub-section (3) of section 4 of the Act every State Board shall be a body corporate with the name specific 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. Section 5 deals with the terms and conditions of the service of the members. Under section 5 (1) a member of a Board, other than a Member-Secretary, shall hold office for a term of three years from the date of his nomination. However, proviso to the said section (1) a member may continue to hold office until his successor enters into his office. Sub-section (2) of section 5 provides the term of office of a member of a Board nominated under clause (b) or clause (c) of sub-section (2) of section 4 shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government. From the reading of section 4 and 5, it is clear that the Chairman being a member of the Board, shall in the office for a period of 3 years which may however, be extended for a further time till the next incumbent takes charge. As per the section mentioned above it is clear that the members nominated under section 3 (2) (b) and (c) and under section 4(2)(b)(C) cannot continue to hold the office of the members of the Board after he, or they cease to be a Government employee but it is not so in case of a Chairman who is appointed under section 4(2) (a).

13. Before we consider further in respect of this matter, it is now to be seen how a 'Board' is constituted and actually what the expression 'Board' means. As mentioned earlier, 'Board' has been defined under section 2 (a) as the State Board or Central Board under the Act. But actually what is the meaning of the Board has not been defined in the Act.

14. Dictionary meaning of the Board, as we find from Black's Law Dictionary, 5th Edition, the Board means "an official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or Government functions. It is also said that the Board means; organisation under the authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of a magisterial, representative or fiduciary character.

15. From the above, it is very clear that a Board does not mean only the name of the Board. It also includes the group of person entrusted to do a particular job. In this case

from section 4(1) quoted above, it is very clear that the State Government is empowered to appoint, constitute a State Board. Sub-section (2) of section 4 refers with persons as members of the said Board. Chairman is one of the said members of the said Board. Therefore, the constitution or appointment of the Board will also include members including the Chairman. If we look to Annexure A notification dated 31st August, 1994, we find that the State Government constituted the Board with the Chairman and members as envisaged under sub-section (2)(a) to (f). If the constitution of the Board includes the members in our opinion, no further appointment would be necessary. The Constitution itself was sufficient and the conditions of service of the members shall be governed as envisaged under section 5 of the Act. In that view of the matter, the subsequent orders will have no effect inasmuch as those are redundant. Therefore, subsequent orders, namely, Annexure and C have no force as those are otiose.

16. In view of the notification dated 13th August, 1994 (Annexure-A), the appellant petitioner was made Chairman at the time of the constitution of the Board and he shall continue to hold office for a period of 3 years as referred to under section 5(1) of the Act and the period of his Chairmanship cannot be curtailed by Annexure-C as we have already held that no separate order of appointment is necessary for the Chairman or other members mentioned under section 4(2) (a) to (e). Therefore, we do not find any force in the submission of Mr. Baruah, learned Advocate General, that the acceptance of the appointment as per Annexure-C estopped the petitioner to approach this court challenging the order of appointment besides there cannot be any estoppels against the provisions of a statute in the present facts and circumstances of the case.

17. Mr. Baruah, learned Advocate General, also submits that Annexure-A order was a conditional notification inasmuch as it was to continue until further order. We have noticed the conditions imposed in Annexure A. It is true that the constitution of the Board was until further order. In the present case, from the facts and circumstances of the case, we find that the present Board has not been dissolved. The Board constituted as per Annexure A, was still continuing on the date when the Annexure C was issued. In our opinion, the State Government has the power to constitute the Board and as per section 5, the term is prescribed and as such, the Government cannot alter the period of the term under the Government orders as mentioned above. Settled principle of law is that when a statute prescribes a particular manner in doing a particular thing, it must be done in the same manner or not at all."

5. The learned Sr. Addl. Advocate General, Arunachal Pradesh, Mr. K. Ete opposing the case of the petitioner on behalf of the State respondents submitted as follows;

That the petitioner's appointment was not in terms of the Act but was purely on political consideration and for a term not specified, therefore, his appointment

was pleasure appointment and cannot claim protection under the Act. The learned Sr. Addl. Advocate General, in support of his submission referred to the appointment order of the petitioner particularly, to the three words appearing at the end of the first sentence of the order which reads as "until further order" and further supplemented his point stating that these three words makes it clear beyond doubt that the petitioner's appointment was purely temporary arrangement and can be cancelled any time without giving notice.

The learned Sr. Addl. Advocate General, further submitted that as per the Rule-20 (1) (a) of Arunachal Pradesh Water (Prevention and Control of Pollution) Rules, 2000, the Chairman of the Pollution Control Board has to be a person having special knowledge or practical experience in administering institutions dealing with the matters aforesaid and nominated by the Government. But in the case of the petitioner, he neither have the knowledge in respect of the matters relating to environmental protection or had the experience in administering institutions dealing with such matters, therefore, his appointment was not as per the Rule or the Act. Hence, he cannot demand or claim protection of the provisions of the Act and the Rules. Had he been appointed as per the Rule and the Act he could have certainly availed the protection as provided under the Act and Rule.

6. The second layer of the argument forwarded by the learned Sr. Addl. Advocate General, is that the petitioner knowing fully well the terms and conditions of his appointment as given in his appointment order had accepted the same, therefore, he cannot now claim otherwise than what was given therein. The learned Sr. Addl. Advocate General, continued and submitted that the order specifically mentioned that he was to continue until further which means that he can be removed any time at the pleasure of the appointing authority. His removal, therefore, was very much in consonance with the terms of his appointment order. As such, he has no valid grievances for which he can claim for redressal.

7. The last point submitted by the learned Sr. Addl. A.G. is that the intention of the Authority who issued the appointment order of the petitioner was made clear in the order itself that the appointment was only for meeting exigencies of the service and not for a full term as provided under the Act if it were so the term would have been mentioned in the order itself.

After having submitted as such, the learned Sr. Addl. Advocate General referred to several judgments of Hon'ble Supreme Court and this High Court. The relevant portions of the judgment are given as follows;

(i). **State of Bihar And Ors –versus- Chandreshwar Pathak**, reported in **(2014) 13 SCC 232**.

“10. The order of appointment, in the present case, is as follows:

“In the light of the order passed by the Inspector General of Police, Criminal Investigation Department, Bihar, Patna, vide his Letter No. 6/86 F3 Sh. Chandeshwar Pathak, s/o Sh. Devnarayam Pathak of Village Haraji, P.O. Haraji, PS- Dimbara, District-Chhapra was appointed as Constable temporarily from 14.01.1988 afternoon on the condition that his previous character found satisfactory and as and when necessary, his service shall be terminated without assigning any reason or show cause. His pay scale shall be Rs.425-10565 EB-10-605 with the basic pay of Rs.425/-. He has been allotted the CT No. 390.”

It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete or any selection process was undertaken before appointment of the respondent.

11. In State of Orissa & Anr. vs. Mamata Mohanty (2011) 3 SCC 436, it was observed as under:

“APPOINTMENT / EMPLOYMENT WITHOUT ADVERTISEMENT:

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Admn., State of Haryana v. Piara Singh, Excise Supdt. v. K.B.N. Visweshwara Rao, Arun Tewari. v. Zila Mansavi Shikshak Sangh, Binod Kumar Gupta v. Ram Ashray Mahoto, National Fertilizers Ltd. v. Somvir Singh, Telecom District Manager v. Keshab Deb, State of Bihar v. Upendra Narayan Singh and State of M.P. v. Mohd. Ibrahim).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

12. No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which S.L.P. has been dismissed by this Court as mentioned earlier”.

(ii). Union of India and Another –versus- Tulsiram Patel And Others, reported in (1985) 3 SCC 398.

The Pleasure Doctrine:

34. The concept of civil service is not now or of recent origin. Governments - whether monarchical, dictatorial or republican - have to function; and for carrying on the administration and the varied functions of the government a large number of persons are required and have always been required, whether they are constituted in the form of a civil service or not. Every kingdom and country of the world throughout history had a group of persons who helped the ruler to administer the land, whether according to modern notions we may call that group a civil service or not, because it is not possible for one man by himself to rule and govern the land and look after and supervise all the details of administration. As it was throughout history, so it has been in England and in India”.

(iii). Uttam Kr. Sarkar -versus- Tatan Kr. Barman, reported in 2005 (2) GLT 168.

“13. I have given my thoughtful consideration to the submissions put forth by the learned counsel for the contesting parties. On meticulous scanning of the rival pleadings so placed before this court by the respective parties, and also upon perusal of the materials available on record, it appears, admittedly, no rule or regulation has been framed for the constitution of the Board in question vis-a-vis Chairman and other members of the committee. In absence of such rules/or and regulation, or guidance, as the case may be, the Board has been constituted by applying the principle of doctrine, the Govt. is to find out as suitable person for the post of Chairmanship and other members. That being so, by exercising, this pleasure doctrine, the Government of Assam, initially was pleased to constitute a Board in the year 2001 i.e. on 9.7.01 with the applicant as Chairman and he was allowed to continue till 21.12.04. But surprisingly for the reason best known to the concerned authority, by notification dated 22.12.04 he has been removed and the writ petitioner was appointed

and after allowing him to continue for about 20 days, this impugned notification dated 12.1.05 has been issued by which the writ petitioner was removed and in his place earlier Chairman/the applicant has been retained to act as Chairman of the Board.

14. On bare perusal of the impugned notification and the earlier order so passed it clearly shows that the entire exercise was made by the authority at the pleasure of the Governor, meaning thereby that the executive has acted on application of doctrine of pleasure. That being the factual position, in the light of above cited cases, it appears that once Doctrine of Pleasure is pressed into service, the scope of granting opportunity of hearing does not come. In other words, in case of application of Doctrine of Pleasure principle of adoption of natural justice will be a mere formality.”

(iv). **Sub Divisional Welfare Boards for S.T. -versus- State of Assam & Ors.**, reported in **2017(2) GLT 437**.

“10. Aggrieved, the Boards challenged the Notifications by filing separate Writ Petitions and argued that the State Government has illegally dissolved them without forming a prior mandatory opinion that orderly conduct of business of the Boards was not possible. It was also argued that the Boards have been dissolved arbitrarily by one stroke of pen in utter violation of the principles of natural justice as neither any reason has been recorded. But the learned Single Judge relying upon the Single Bench decision of this Court in *Mahadev Panging Vs. State of Assam*, 2016 (2) GLT 1109 : (2016) 2 GLR 831 has held that constitution and re-constitution of the Boards is at the pleasure of the Government and there is no enforceable right of the nominated members to continue to hold office for any fixed tenure. Thus, applying the principle of “Doctrine of Pleasure” the learned Single Judge by the common impugned order has dismissed the writ petitions. It is in this background the present appeals have been filed.

12. After hearing the learned counsel for the parties, we are of the considered view that the principle of “Doctrine of Pleasure” is not applicable in the present bunch of cases. We say so because as per new guidelines published vide notification dated 20.2.2014, the Chairman and Vice Chairman are not nominated, but appointed by the Government and that too, on the recommendation made by the Selection Committee specially constituted for this purpose. Also, it is nowhere mentioned therein that either the term of office of the Boards or the tenure of Chairman/Vice Chairman of the Boards shall be at the ‘pleasure of Government’. On the contrary, the term of office of the Boards is fixed for a maximum period of 3/5 ye3ars, which is reckoned with, from the date of notification constituting the Boards. And the Boards can be dissolved before that period by a notification only when the State Government was of the opinion that circumstances so existed whereby orderly conduct of business of the Boards was not possible. In other words, the State is empowered to dissolve the Boards before expiry of their term of office only when it was of the opinion that orderly conduct of business of the Boards was not possible and not otherwise. Requirement of forming such opinion is an indispensable condition before dissolving the Boards. Likewise, under the notification dated 20.2.2014 even the Chairman/Vice Chairman or Members of the Boards can be removed by the State only upon receipt of specific complaint and after conduct of proper enquiry thereof and establishment of facts. There is yet another mandatory condition which the Government has to adhere before removing and that is of giving them reasonable opportunity of hearing. With these conditions in the guidelines notified, intention is obvious that Government cannot either dissolve the Boards or remove the Chairman/Vice-Chairman or Members of the Boards “at its pleasure”. Also in our country-which is governed by the Rule of Law-no authority can exercise of power in breach of express or implied

conditions will be illegal if the condition breached is mandatory. Moreover, it is well settled that the authority must act in a manner in which it is empowered to do so. The learned Single Judge overlooked these new provisions added in the guidelines and illegally dismissed all the writ petitions by the impugned order.

"13 We shall now refer to the decisions cited by the learned Senior counsel for the State and examined whether the State gets any help from them. The cases of State of Assam-vs-Makhan Pegu and Mahesh Doley-vs-State of Assam were decided by another but same Division Bench of this Court. In these cases, the Government had constituted interim council by nominating Members under Section 80 of the Missing Autonomous Council Act, 1995 who were subsequently removed. Aggrieved, the nominated Members challenged their removal. The question therefore arose was whether such nominated Members could be removed at the pleasure of the Government. Section 80 which was the foundation of decision is reproduced as under:

"80 Transitional provision: The Government shall, as soon as possible, take steps for the constitution of an Interim General Council by nomination and to nominate the Executive Council therefrom to perform in addition, the functions of the Village Councils till the General Council is constituted under this Act.

Provided that any or all the members of such Interim General or Executive Council may be removed and replaced by any other person by the Government at any time.

(v). Mahadev Panging & Ors. –versus- State of Assam & Ors., reported in 2016 (2) GLT 1109.

"20. As stated above in none of the notifications constituting the board and appointing the petitioners as Chairman any fixed tenure was specified. It was only on 20.02.2014, the Government issued guidelines regarding constitution and functioning of the boards. The qualifications/ disqualifications and the method of selection etc. were also laid down. As regards the tenure of office, for the first time, it was laid down that the same shall not exceed five years, meaning thereby that the same could less than 5 (five) years also. By bringing the modification vide Annexure-3 notification dated 12.09.2014, the term of office of the board was specified to be not exceeding 3 (three) years. As in the case of 5(five) years in the case of 3 (three) years also, having regard to the specification " not to exceed", coupled with the nature of selection and appointment, it cannot be said that the petitioners are entitled to hold office for a fixed tenure of five years s per their own showing, no such fixed tenure was available for any boards and for that matter in all the boards.

"21. Above part, the petitioners are also not occupying any selection post. The post they had held are purely in the domain of the Doctrine of Pleasure and not otherwise. In the notifications constituting the respective board and nominating the members, it was never specified that their term of office would be for five years. For the first time in 2014, two notifications, referred to above, were issued laying down the guidelines towards constituting the board and selecting the members. In these two notifications also, no fixed tenure has been prescribed. What has been said is that the term of office shall not exceed 5

(five) years (now three) years. Pursuant to such notifications, all the boards have been dissolved and reconstituted.

22 Another point urged by the petitioners is that the private respondents were not appointed as per the requirement of the guidelines. In the counter affidavit filed by the respondents, it is their specific case that they were recommended by the concerned Minister. It being within the domain of the Government to appoint and re-appoint members and also to constitute and reconstitute the board, I am of the considered opinion that the issued raised in this writ petition cannot be viewed within the principles of judicial review exercising writ jurisdiction”.

8. It is admitted by all the parties that the Arunachal Pradesh Pollution Control Board was constituted under the Water (Prevention and Control of Pollution) Act, 1974 and the rule framed there under known as Arunachal Pradesh Water (Prevention and Control of Pollution) Rules, 2000. Section 4 of the Act provides that the State Pollution Control Board has to be constituted with effect from such date as may be notified in the official gazette and the same is to be headed by 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 Government. Section 5 of the same Act provide the terms of office of the members of the Board as three years from the date of their nomination. The provisions of the two sections are given here below;

“4. CONSTITUTION OF STATE BOARDS- (1) *The State Government shall, with effect from such date⁶*** as it may, by notification in the Official Gazette, appoint, constitute a⁷[State Pollution Control Board], under such name as may be specified in the notification, to exercise the powers conferred on the perform the functions assigned to that Board under this Act.*

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

*(a) a⁸[*** chairman, being a person having special knowledge or practical experience in respect of⁹[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.*

10[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) ¹³[such number of non-officials, not exceeding three] to be nominated by the State Government to represent the interest 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]

(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.

(4) Notwithstanding anything contained in this section, no State Board shall be constituted for a Union territory and in relation to a Union territory, the Central Board shall exercise the powers and perform the functions of a State Board for that Union territory:

Provided that in relation to a Union territory the Central Board may delegate all of any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify.

5. TERMS AND CONDITIONS OF SERVICE OF MEMBERS- *(1) Save as otherwise provided by or under this Act, a member of a Board, other than, a member-secretary, shall hold office for a term of three years from the date of this nomination:*

Provided that a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The term of office of a member of a Board nominated under clause (b) or clause (e) of sub-section (2) of Section 3 or clause (b) or clause (e) of sub-section (2) of section 4 shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government or, as the case may be, the company or corporation owned, controlled or managed by the Central Government or the State Government, by virtue of which he was nominated]

(3) *The Central Government or, as the case may be, the State Government may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.*

(4) *A member of a Board, other than the member-secretary, may at any time resign his office by writing under his hand addressed--*

(a) in the case of chairman, to the Central Government or, as the case may be, the State Government; and

(b) in any other case, to the chairman of the Board; and the seat of the chairman or such member shall thereupon become vacant.

(5) *A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board,¹⁶[or where he is nominated under clause (c) or clause (e) of sub-section (2) of section (3) or under clause (c) or clause (e) of sub-section (2) of section 4, if he ceases to be a member of the State Board or of the local authority or, as the case may be, of the company or corporation owned, controlled or managed by the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify]*

(6) *A casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in a whose place he was nominated.*

(7) *A member of a Board¹[shall be eligible for renomination].*

(8) *The other terms and conditions of service of a member of a Board, other than the chairman and member-secretary, shall be such as may be prescribed.*

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

9. Rule-20 (a) of Arunachal Pradesh Water (Prevention and Control of Pollution) Rules, 2000 also provides the qualifications and the manner of appointment of the Chairman. The same is reproduced here below;

(a) The Chairman shall be 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.

10. From the above provisions of the Act and the Rule under which the Arunachal Pradesh State Pollution Control Board was constituted five things are very clear;

(a) that a person to be appointed as Chairman of Arunachal Pradesh of Pollution Control Board should be 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.

(b) that he is to be nominated by the Government.

(c) that the term appointment should be for three years.

(d) that he can be removed before the term of three years but by first giving him a chance of being heard.

(e) that the Chairman may be either full time or part time as the Government may deem fit.

In this instant case, there is nothing to show that the petitioner is a man possessing all the required qualifications and he was nominated by the Government in accordance with the provision of the Act and Rule. The only claim of the petitioner is that he was appointed as Chairman to a Board constituted under the statute and the rule made there under, therefore, he should be deemed to have been appointed under the Act and Rule and as such, cannot be removed without being given a chance of being heard as provided under section 5 of the Act i.e. the Water (Prevention and Control of Pollution) Act, 1974. No strong case has been made out by the petitioner to show that he is qualified to be appointed as per the Act and Rule and he was appointed as per the procedure provided both in the Act and Rule i.e. to be nominated by the State Government. When both the Act and Rule framed there under clearly provides the qualification of a Chairman and when the petitioner has not shown that he does possess such qualification, it is not possible for this Court to presume or deem that he was appointed as per the Act and Rule. The same is also true in the case of the private respondent No.4 who is appointed in place of the petitioner. Therefore, it would not be wrong to conclude that both the appointment orders were issued in violation of both the Act and Rule or not issued in accordance with the Act or Rule. When it is so clear that the Board was constituted under the Act and Rule for the purpose which is also given therein,

it is only natural to conclude that the Board should also be manned by a person who has such qualifications as prescribed in the same Act and Rule. Appointment of any other person to the post of Chairman or members of the Board will not serve the purpose for which the Board was constituted. The post of Chairman of such an important Pollution Control Board should be manned by a person who has knowledge of the subject matter and experience in the field. Otherwise such post would become only a drain to the exchequer without serving its purpose. Nepotism, discrimination and arbitrariness should be avoided while nominating persons for appointment to such important post. We live in a Country where our way of life and ethos are guided by rule of law, therefore, our actions should also be informed by the same. When a statute has provided a particular manner of doing a thing, it has to be done in that manner, otherwise not. An illegal order cannot be replaced by another illegal order. People in power should not make such important post as parking place for their supporters or for showing favour to their near and dear ones at the cost of public interest. One should not stress the discretion too far under the cover of doctrine of pleasure. In fact, when the statute and the Rule framed there under provides so clearly, there is no room for invoking such doctrine. Every act or action of a democratically elected Government should be as per law and in the public interest and not otherwise.

In view of the above discussions, this Court cannot extend the protection provided by the Act to the petitioner. At the same time, this Court also cannot uphold the impugned order as it was issued in violation of both the Act and Rule. It would have been different if the impugned order was issued by following the provisions of the Act and Rule. In the peculiar facts and circumstances, in the interest of justice and the Pollution Control Board, the impugned order is quashed and set aside but with the direction that the State Government, as per the Act and Rule should nominate a person having such qualifications as required under the Act and Rule within a period of 2(two) months from today. Till then, the petitioner shall continue to be the Chairman of the Board.

With this, the writ petition is disposed.

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JUDGE