

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH**  
**(NAHARLAGUN)**

**W.P. (C) 67 (AP)/2019**

**Mr. Techi Tagi Tara**, aged about 49 years,  
Son of Late Techi Sokap,  
Resident of D. Sector, Nirjuli  
Post & P.S. - Nirjuli  
District - Papum Pare  
Arunachal Pradesh.

...**PETITIONER**

**-versus-**

1. **The State of Arunachal Pradesh**, represented by the Chief Secretary to the Government of Arunachal Pradesh, Itanagar, Pin- 791111, District - Papum-pare, Arunachal Pradesh.
2. **The Chief Secretary** to the Government of Arunachal Pradesh, Itanagar, Pin-791111, District - Papum-pare, Arunachal Pradesh.
3. **The Principal Secretary-cum-PCCF, (E&F)**, Government of Arunachal Pradesh, Itanagar, Pin-791111, District - Papum-pare, Arunachal Pradesh.
4. **Dr. Tangor Tapak**,  
Son of Late Takong Tapak  
Resident of Vill & P.O.- Rani  
P.S. - Ratksin, District - East Siang,  
Arunachal Pradesh.  
Pin - 791102.

**Advocates for the petitioner** : Ms. M. Dev,  
Ms. N. Deb

**Advocates for the respondents** : Ms. G. Ete, Additional Senior  
Government Advocate

Shri T. Tapak, for the respondent No. 4

**:::BEFORE:::**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**Date of hearing : 05.11.2019**

**Date of Judgment & Order : 05.11.2019**

**JUDGMENT AND ORDER(ORAL)**

The instant writ petition has been filed challenging an order dated 29.01.2019, by which, the respondent No. 4 has been appointed as the Chairman of the Arunachal Pradesh State Pollution Control Board (hereinafter referred to as the Board).

2. The case in hand has a chequered history and the relevant facts are narrated below.

3. The petitioner was initially appointed as the Chairman of the Board vide an order dated 04.12.2015 until further orders to be passed by the appropriate authority. In the meantime, one Shri R. S. Bhandari has approached the National Green Tribunal (NGT) challenging appointments of Chairperson in various Pollution Control Boards of the different States. The NGT vide order dated 24.08.2016, interfered with such appointments which were mainly on the ground that the benefit was given to persons with political affiliation. As the NGT inherently lacked jurisdiction to adjudicate such matter, appeals were filed in the Hon'ble Supreme Court including one by the present petitioner which was registered as Civil Appeal No. 1359/2017. The said appeal was disposed of by the Hon'ble Supreme Court vide an order dated 22.09.2017, holding that the NGT did not have jurisdiction to pass the impugned order. The Hon'ble Supreme Court, however, had made certain observations which are extracted herein below -

*"21.. It appears to us that the NGT realized its limitations in this regard and therefore issued a direction to the State Governments to reconsider the appointments already been made, but the seminal issue is really whether the NGT could at all have entertained a claim of the nature that was raised. For reasons given above, the answer must be in the negative and it would have been more appropriate for the NGT to have required the claimant to approach a constitutional court for the relief prayed for in the original application. To this extent therefore, the direction given by the NGT must be set aside as being without jurisdiction. However, we have been told that some States have implemented the order NGT and removed some members while others have*

*approached this Court and obtained an interim stay order. Those officials who were removed pursuant to the order of the NGT (including the appellant Techī Tagī Tara) have an independent cause of action and we leave it open to them to challenge their removal in appropriate and independent proceedings. This is an issue between the removed official and the State Government the removal is not a public interest issue and we cannot reverse the situation.*

*"33.. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this Court and as per reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a Writ of Quo Warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such."*

**4.** In the meantime, vide an order dated 03.03.2017, the petitioner was removed from the post of Chairman and in his place one Shri Kaling Moyang, Member of the Legislative Assembly, was appointed. Aggrieved by the said action, the petitioner had approached this Court by filing WP(C) 103 (AP)/2017.

**5.** This Court vide order dated 28.08.2017, had set aside the impugned order dated 03.03.2017 and directed holding of fresh recruitment within a period of 2 (two) months. It was further directed that till such recruitment was conducted, the petitioner would continue in the said post. It is the case of the petitioner that in the meantime, the Arunachal Pradesh State Pollution Control Board (Qualification and Other Terms and Condition of Service of Chairman) Rules, 2018 were formulated. In terms of the said Rules, a Search-cum-Selection Committee was constituted which vide the impugned order dated 29.01.2019 had selected and appointed the respondent No. 4 as the Chairman. It is this order which is the subject matter of challenge in the present writ petition.

**6.** This Court while issuing notice, vide order dated 19.02.2019, observed that the prayer for interim order would be considered on the next date fixed. Ultimately, the prayer for interim relief was heard and this Court vide order dated 19.03.2019, had directed that a *prima facie* case was made out by the

petitioner and since the appointment of the respondent No. 4 appeared to be in violation of the statutory requirement, the impugned order dated 29.01.2019 was stayed till further orders. The said interim order was not put to challenge by any of the respondents and as on today, the Board is running under the temporary Chairmanship of an IFS Officer.

**7.** I have heard Ms. M. Dev, learned counsel for the petitioner. I have also heard Ms. G. Ete, learned Additional Senior Government Advocate, Arunachal Pradesh; as well as Shri T. Tapak, learned counsel for the respondent No. 4.

**8.** Ms. Dev, learned counsel for the petitioner, makes the following submissions.

- (i) Respondent No. 4 does not possess the required qualification as envisaged by the 2018 Rules.
- (ii) The impugned order of appointment dated 29.01.2019, apart from being in violation of the statutory norms is also in teeth of the observation of the Hon'ble Supreme Court specially with regard to appointment of persons as Chairman with political affiliation.
- (iii) The Search-cum-Selection Committee, as stipulated in Rule 5 of the Rules, have been grossly violated which goes to the root of the matter vitiating the selection and appointment. The materials placed on record by the petitioner himself would go on to show that the petitioner is disqualified for being considered for appointment to the post of Chairman.
- (iv) The parent Act, namely, Water (Prevention and Control of Pollution) Act of 1974, more particularly, Section 4 (2) (A) is not complied with in regard to possessing of special knowledge or practical experience for being appointed to the post of Chairman.

**9.** Elaborating on her submission, Ms. Dev, learned counsel, by referring to the Rules of 2008, submits that if a candidate does not possess a Bachelor Degree in Science relating to environment, he has to be have a Bachelor Degree either in Engineering or Medicines and should have special knowledge with

practical of experience at least of 5 (five) years relating to the environmental protection services including pollution mitigation practices and other related services in any other fields, namely, Biomedical Waste Management, Solid Waste Management etc.

**10.** For ready reference, Rule 3 (1) (A) is extracted herein below -

*"3. Educational and other qualifications for appointment as Chairman:  
(1) No person shall be eligible for being selected for nomination as the Chairman under clause (a) of sub-section 3 of the Act, unless -*

*(a) he possesses/Bachelor's Degree in science relating to environment or/Bachelor's Degree in engineering/medicines from a recognized University or Institute and has special knowledge with practical of experience at least of 5 (five) years relating to the environmental protection services, including pollution mitigation practices and other related services in any of such fields, viz Biomedical Waste Management, Solid Waste Management etc."*

**11.** So far as the Selection Committee is concerned, the relevant proof is Rule 5, which is extracted herein below -

*"Mode of recruitment: (i) The Chairman shall be appointed by a Search-cum-Selection Committee consisting of the following namely:-*

- (i) Chief Secretary, - Chairman  
Government of Arunachal Pradesh*
- (ii) PCCF (HoEF) and Principal Secretary - Member  
(E&F), Government of Arunachal Pradesh*
- (iii) Director, NERIST - Member*
- (iv) One A.P.S.T. officer not below the rank of - Member  
Secretary to the Government.*

*If none of the above member belongs to APST"*

**12.** Referring to the minutes of selection, Ms. Dev, learned counsel, has pointed out that in violation of the prescription of Rule 5, the Search-cum-Selection Committee consisted of 6 (six) numbers. Referring to the observation of the Hon'ble Supreme Court while deciding Civil Appeal No. 1359/2017, Ms. Dev, learned counsel, submits that the concern of the Hon'ble Supreme Court was with regard to appointments for the post of Chairman of Pollution Control Board of different States being made of persons with political affinity. The Hon'ble Supreme Court in the said judgment has severely deprecated such practice and by ignoring such observation of the Hon'ble Supreme Court, the respondent No. 4, who admittedly is an Ex-Minister of the State and political activist, had been given the benefit of the appointment. The said respondent No. 4 does not have any special knowledge of environmental protection.

**13.** Ms. G. Ete, learned State Counsel, however, on the other hand, submits that the appointment of the respondent No. 4 as Chairman has been duly made by a duly constituted Search-cum-Selection Committee and therefore, is not liable to be interfered with. It is contended that the selection made is by a specialized committee which had taken into consideration the requirements of the statute and such consideration are not liable for scrutiny by this Court.

**14.** Shri Tapak, learned counsel for the respondent No. 4, while adopting the argument of the learned State Counsel, has further contended that the said respondent No. 4 has all the qualifications and experience as required by the Rules holding the field. According to the interpretation of the learned counsel, the educational qualification has to be construed to be a Bachelor Degree in Engineering or Medicine and admittedly, the respondent No. 4 has got the MBBS Degree. So far as special knowledge with practice of experience relating to environmental protection service is concerned, Shri Tapak, learned counsel, has drawn the attention of this Court to a certificate issued by Daying Ering Wild Life Foundation, wherein, it has been stated that the petitioner, who is an Ex-Minister, has been in association with the NGO in the capacity of Patron and Advisory since its inception. Additionally, Shri Tapak, learned counsel, question the *locus* of the petitioner to make the present challenge. He further submits that praying for *quo warranto* is not open for the petitione nr when the petitioner himself is a contender of the said post.

**15.** Rejoining her submissions, Ms. Dev, learned counsel, submits that the 'Resume' of the respondent No. 4, as annexed with the affidavit-in-opposition (page 28), would show that apart from being a Minister of the State, currently the respondent No. 4 claim to be a Member of the core group of the State BJP, Arunachal Pradesh, which is the highest policy decision making body of the party in the State. Referring to the judgment of the Hon'ble Supreme Court, Ms. Devi, learned counsel, submits that the question of *locus* would not stand on the way as the Hon'ble Supreme Court has given liberty to challenge in such appointments made where the beneficiary is a political affiliated person. As regards the objection of praying for a writ of *quo warranto*, it is submitted that the Hon'ble Supreme Court itself has made categorical observation regarding filing of writ petitions praying for a writ of *quo warranto* in case and ineligible is favoured and appointed to the post of Chairman of the Boards.

**16.** Ms. Dev, learned counsel, in support of her submissions, has relied upon the following decisions -

- (1) *Deboranjan Saikia & Ors. Vs. State of Assam & Anr.*, reported in 2005 3 GLR 659;
- (2) *Dr. Biren Das Vs. Tezpur University & Anr.*, reported in 2003 3 GLR 714;
- (3) *Raj Kumar & Ors. Vs. Shakti Raj & Anr.*, reported in (1997) 9 SCC 527;
- (4) *J & K Public Service Commission & Ors. Vs. Dr. Narinder Mohan & Anr.*, reported in (1994) 2 SCC 630; and
- (5) *Bhupendra Nath Hazarika & Ors. Vs. State of Assam & Ors.*, reported in (2013) 2 SCC 516.

**17.** All the aforesaid cases relates to proper constitution of the Selection Committee in accordance with Rule which is a *sine qua non* to hold a valid selection.

**18.** The rival contentions of the respective counsels have been duly considered. First let us deal with the preliminary objections of *locus* on the part of the petitioner and additionally as to whether a writ of *quo warranto* can be prayed for. In the opinion of this Court, such objection cannot be sustained in view of the specific liberty granted by the Hon'ble Supreme Court in the order dated 22.09.2017 as well as for filing of petitions for issuance of a writ in the nature of *quo warranto*. The statutory prescription of the educational qualifications as laid down in the Rules of 2018 *read with* Section 4 (2) (a) of the Act, would go to show that the respondent No. 4 does not possess the requirement of having special knowledge with practical of experience at least of 5 (five) years relating to the environmental protection services including pollution mitigation practices and other related services in any other fields, namely, Biomedical Waste Management, Solid Waste Management etc. It is also not discernible from the certificate as to what is the status of the NGO, namely, when was it established, what are the natures of activities performed, what kind of recognition of it by the authorities etc. Even the 'Resume' submitted by the respondent No. 4 would show that more emphasis upon his political carrier than his knowledge about the environment. Though a certificate has been relied on by Shri Tapak, learned counsel for the respondent No. 4, that certificate cannot

conclusively establish about possessing such special knowledge as required by the statute holding the field. This Court is also of the view that the formation of the Search-cum-Selection Committee is not in prescription of the Rule 5 of the Rules as there is a mark variation in the Search-cum-Selection Committee and the one stipulated by the Rules.

**19.** In view of the aforesaid facts and circumstances and the discussions made above, this Court is of the opinion that the impugned order dated 29.01.2019, is not sustainable in law and accordingly, the same is set aside and quashed.

**20.** At this stage, Ms. Dev, learned counsel for the petitioner, prays for a direction that till a regular Chairman is appointed, the appointment of the petitioner as the Chairman should be continued as was done earlier. This aspect would be taken into consideration by the authorities, more particularly, in view of the proviso to Section 5 of the Rules of 1974 which contemplates such arrangements.

**21.** The writ petition is, accordingly, allowed.

**JUDGE**

*Lipak*