



WP No. 19569/2023 C/W
WP Nos.9526/2020, 9923/2020,
9500/2021, 9897/2021, 15179/2021,
19027/2023, 23417/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 29TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 19569/2023 (GM-FOR)
C/W

WRIT PETITION Nos.9526/2020(GM-RES),
9923/2020(GM-RES), 9500/2021(GM-RES),
9897/2021(GM-RES), 15179/2021(GM-RES),
19027/2023(GM-RES), 23417/2023(GM-POL)

IN W.P.NO.19569/2023:

BETWEEN:

DR. SHANTH. A. THIMMAIAH,
S/O THIMMAIAH,
AGED ABOUT 51 YEARS, CHAIRMAN,
KARNATAKA STATE POLLUTION CONTROL BOARD.,
PARISARA BHAVANA, NO.49, CHURCH STREET
BENGALURU-560 001.

...PETITIONER

(BY SRI.D R RAVISHANKAR., SENIOR ADVOCATE A/W
SMT. SIRI RAJASHEKAR., ADVOCATE)

AND:

1. THE GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA, BENGALURU-560 001.
REP BY ITS CHIEF SECRETARY.
2. THE PRINCIPAL SECRETARY,
GOVERNMENT OF KARNATAKA,
DEPARTMENT OF FOREST, ECOLOGY & ENVIRONMENT,





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NO.708, M S BUILDING, 7TH FLOOR,
NEAR VIDHANASOUDHA, AMBEDKAR VEEDHI,
BENGALURU-560 001.

3. SRI. MAHADEV,
ENQUIRY OFFICER,
ADDITIONAL DIRECTOR,
KARNATAKA STATE ACCOUNTS DEPARTMENT,
3RD FLOOR, A BLOCK, TTMC BUILDING,
SHANTHINAGAR, BENGALURU-560 027.
4. KARNATAKA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ADMINISTRATIVE OFFICER,
MR.R.VENKATACHALAPATHY,
O/AT PARISARA BHAVAN, CHURCH STREET,
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI.K SHASHIKIRAN SHETTY., ADVOCATE GENERAL A/W
SRI.DEVARAJ ASHOK., HCGP FOR R1 & R2;
SRI.VIKRAM HUILGOL., SENIOR ADVOCATE A/W
SRI.MAHESH A CHOWDHARY., ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF
APPROPRIATE NATURE INCLUDING A WRIT INT HE NATURE OF
CERTIORARI TO QUASH THE INITIATION OF THE ENQUIRY
OFFICER VIDE No.APAJI/169/EPC/2023 DATED 26.07.2023
ISSUED BY THE 2ND RESPONDENT ANNEXURE-Q AND ETC.,

IN W.P.NO.9526/2020:

BETWEEN:

R ANJANEYA REDDY,
AGED ABOUT 50 YEARS,
S/O A RAMAIAH,
R/AT NAYANAHALLI, PATRENAHALLI POST,
CHIKKABALLAPURA TALUK AND DISTRICT-562 101.

...PETITIONER

(BY SRI.X M JOSEPH., ADVOCATE)



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AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA, AMBEDKAR VEEDHI,
BANGALORE-560 001.
2. THE PRINCIPAL SECRETARY,
DEPARTMENT OF FORES, ECOLOGY & ENVIRONMENT,
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA, BANGALORE-560 001.
3. THE MEMBER SECRETARY,
THE KARNATAKA STATE POLLUTION CONTROL BOARD.,
PARISARA BHAVANA, CHURCH STREET
BANGALORE-560 001.

...RESPONDENTS

(BY SRI.K SHASHIKIRAN SHETTY., ADVOCATE GENERAL A/W
SRI.DEVARAJ ASHOK., HCGP FOR R1 & R2;
SRI.VIKRAM HUILGOL., SENIOR ADVOCATE A/W
SRI.MAHESH A CHOWDHARY., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED GUIDELINES DATED 19.06.2020
ISSUED BY THE R-2 VIDE ANENXURE-A AND ETC.,

IN W.P.NO.9923/2020:

BETWEEN:

MR. KRISHNAIAH P SREENATH,
SON OF MR. K PARTHANATH,
AGED ABOUT 65 YEARS,
RESIDING AT 2390, 1ST FLOOR,
1ST A MAIN, 7TH B CROSS, VIJAYANAGAR,
BANGALORE, KARNATAKA- 560 040.

...PETITIONER

(BY SRI.ADITYA NARAYAN., ADVOCATE)



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AND:

1. STATE OF KARNATAKA,
DEPARTMENT OF ECOLOGY & ENVIRONMENT
708, M S BUILDING, NEAR-VIDHANA SOUDHA,
AMBEDKAR VEEDHI, BENGALURU,
KARNATAKA 560 001.
REPRESENTED BY ITS PRINCIPAL SECRETARY.

2. THE KARNATAKA STATE POLLUTION
CONTROL BOARD.,
PARISARA BHAVAN, NO. 49, CHURCH STREET,
BENGALURU, KARNATAKA 560 001.
REPRESENTED BY ITS CHAIRMAN

3. SRI. SRINIVASULU,
MEMBER-SECRETARY,
KARNATAKA STATE POLLUTION CONTROL BOARD
PARISARA BHAVAN, NO. 49, CHURCH STREET,
BENGALURU, KARNATAKA 560 011.

...RESPONDENTS

(BY SRI.K SHASHIKIRAN SHETTY., ADVOCATE GENERAL A/W
SRI.DEVARAJ ASHOK., HCGP FOR R1;
SRI.BASAVARAJ S.SAPPANNAVAR.,ADVOCATE FOR R2 & R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO ISSUE DIRECTION
STRIKING DOWN THE GUIDELINES FOR NOMINATION, TERMS
AND CONDITIONS OF SERVICE OF CHAIRMAN, MEMBERS AND
APPOINTMENT OF MEMBER SECRETARY OF THE KARNATAKA
STATE POLLUTION CONTROL BOARD DATED 19.06.2020
ANNEXURE-A ISSUED BY R-1 AS VIOLATIVE OF THE ACTS,
CONTRARY TO THE DIRECTIONS ISSUED BY THE HONBLE
SUPREME COURT IN ITS JUDGMENT DATED 22.09.2017 AND
ULTRA VIRES THE INDIAN CONSTITUTION AND ETC.,



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IN W.P.NO.9500/2021:

BETWEEN:

R ANJANEYA REDDY,
AGED ABOUT 51 YEARS,
S/O A RAMAIAH,
R/AT NAYANAHALLI, PATRENAHALLI POST,
CHIKKABALLAPURA TALUK AND DISTRICT-572 101.

...PETITIONER

(BY SRI.X M JOSEPH., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS CHIEF SECRETARY
VIDHANA SOUDHA, AMBEDKAR VEEDHI,
BANGALORE-560 001.
2. THE UNDER SECRETARY TO GOVT
(ECOLOGY AND ENVIRONMENT)
FOREST, ECOLOGY & ENVIRONMENT DEPARTMENT
GOVERNMENT OF KARNATAKA,
M.S.BUILDING, BANGALORE-560 001.
3. THE MEMBER SECRETARY,
KARNATAKA STATE POLLUTION CONTROL BOARD
PARISARA BHAVANA, CHURCH STREET,
BANGALORE-560 001.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY., ADVOCATE GENERAL FOR
SRI. DEVARAJ ASHOK., HCGP FOR R1 & R2;
SRI. VIKRAM HUILGOL., AAG FOR
SRI. MAHESH CHOWDHARY., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED PUBLIC NOTICE DTD.21.07.2020
ISSUED BY THE R-2 VIDE ANNX-A AND FURTHER QUASH ALL
SUBSEQUENT SELECTION PROCESS ADOPTED BY THE STATE
GOVERNMENT FOR NOMINATING THE CHAIRMAN OF THE
KARNATAKA STATE POLLUTION CONTROL BOARD (KSPCB) AND
ETC.,



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IN W.P.NO.9897/2021:

BETWEEN:

MR. KRISHNAIAH P SREENATH,
SON OF MR. K PARTHANATH ,
AGE ABOUT 65 YEARS,
RESIDING AT NO 2390, 1ST FLOOR, 1ST A MAIN,
7TH B CROSS, VIJAYANAGAR,
BANGALORE, KARNATAKA – 560 040.

...PETITIONER

(BY SRI. ADITYA NARAYAN, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
DEPARTMENT OF ECOLOGY & ENVIRONMENT,
708, M S BUILDING,
NEAR VIDHANA SOUDHA,
AMBEDKAR VEEDHI, BENGALURU,
KARNATAKA – 560 001.
REP BY ITS PRINCIPAL SECRETARY.

2. KARNATAKA STATE POLLUTION CONTROL BOARD
PARISARA BHAVAN, No.49, CHURCH STREET,
BENGALURU, KARNATAKA – 560 001.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY., ADVOCATE GENERAL FOR
SRI. DEVARAJ ASHOK., HCGP FOR R1;
SRI. VIKRAM HUILGOL., SENIOR ADVOCATE A/W
SRI. MAHESH A CHOWDHARY., ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO A) ISSUE AN
APPROPRIATE WRIT QUASHING THE IMPUGNED NOTICE DATED
21/07/2020 BEARING NO.FEE 143 EPC 2020 FOR THE
NOMINATION FOR THE POST OF CHAIRMAN TO THE
KARNATAKA STATE POLLUTION CONTROL BOARD UNDER THE
WATER (PREVENTION AND CONTROL OF POLLUTION) ACT,
1974 AND ETC.,



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IN W.P.NO.15179/2021:

BETWEEN:

PARISARA ENVIRONMENT
PROTECTION ORGANIZATION (R)
BY ITS SECRETARY,
SRI ESHWAR PRASAD,
SPOORTHIVANA, CJF-BWSSB
18TH CROSS, MALLESHWARAM,
BENGALURU-560 055.

...PETITIONER

(BY SMT.ANASUYA DEVI K S., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA,
DR AMBEDKAR VEEDHI,
BENGALURU-560 001.
2. THE PRINCIPAL SECRETARY,
FOREST ECOLOGY & ENVIRONMENT,
M S BUILDING, DR AMBEDKAR VEEDHI,
BENGALURU-560 001.
3. KARNATAKA STATE POLLUTION CONTROL BOARD
BY ITS MEMBER SECRETARY,
PARISARA BHVANA, CHURCH STREET,
BENGALURU-560 001.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY., ADVOCATE GENERAL FOR
SRI. DEVARAJ ASHOK., HCGP FOR R1 & R2;
SRI. VIKRAM HUILGOL., SENIOR ADVOCATE A/W
SRI. MAHESH A CHOWDHARY., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
DECLARE THAT THE GUIDELINES FOR NOMINATION, TERMS
AND CONDITIONS OF SERVICE OF CHAIRMAN, MEMBERS AND
APPOINTMENT OF MEMBERS SECRETARY OF THE KARNATAKA
STATE POLLUTION CONTROL BOARD UNDER THE PROVISIONS



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OF THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974, ISSUED BY THE GOVERNMENT OF KARNATAKA UNDER GO NO. FEE 230.EPC,2017, BENGALURU DATED 19.06.2020 WITH CORRIGENDUM DATED 21.072020, CORRIGENDUM DATED 21.09.2020 AND CORRIGENDUM DATED 06.11.2020, AS PER ANNEXURES - A TO D AS VALID AND IN CONFORMITY WITH THE PROVISIONS OF S.4(2) (a) TO (f) OF THE WATER (PREVENTION AND CONTRAOL OF POLLUTION) ACT, 1974 AND IN CONFORMITY WITH THE LAW LAID DOWN BY THE HON'BLE SUPREME COURT JUDGMENT DATED 22.09.2017 IN CIVIL APPEAL NO. 1359/2017 TECHI TAGI TARA -VS - RAJENDRA SINGH BHANDARI AND OTHER - 2018 (11) SCC 734 AND ETC.,

IN W.P.NO.19027/2023:

BETWEEN:

MOHAN KUMAR KONDAJJI,
AGED 67 YEARS,
EX MLC AND BOARD MEMBER KSPCB,
R/AT 218, 15TH CROSS, MAHALAKSHMIPURAM
BENGALURU 560 086.

...PETITIONER

(BY SRI.RAJENDRA M S., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA, AMBEDKAR VEEDHI,
BANGALORE 560 001.
2. THE PRINCIPAL SECRETARY,
DEPARTEMNT OF FOREST, ECOLOGY & ENVIRONMENT,
GOVERNMENT OF KARNATAKA ,
VIDHANA SOUDHA,
BANGALORE 560 001.
3. THE MEMBER SECRETARY,
KARNATAKA STATE POLLUTION CONTROL BOARD



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PARISARA BHAVANA, CHURCH STREET,
BANGALORE 560 001.

4. SHANTH AVARAHALLY THIMMAIAH,
AGED ABOUT 50 YEARS,
RESIDING AT E-516, NYDHILE RESIDENCY,
GOTTIGERE, BANNERGHATTA ROAD,
BENGALURU - 560 083.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY., ADVOCATE GENERAL FOR
SRI. DEVARAJ ASHOK., HCGP FOR R1 & R2;
SRI. VIKRAM HUILGOL., SENIOR ADVOCATE A/W
SRI. MAHESH A CHOWDHARY., ADVOCATE FOR R3 & R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO i)
ISSUE A WRIT OF QUO-WARRANTO OR ANY OTHER
APPROPRIATE WRIT PROHIBITING THE CURRENT CHAIRMAN
FROM EXERCISING HIS DUTIES AS THE CHAIRMAN OF THE
RESPONDENT NO.3 i.e., KARNATAKA STATE POLLUTION
CONTROL BOARD AND ETC.,

IN W.P.NO.23417/2023:

BETWEEN:

DR. SHANTH A. THIMMAIAH,
S/O THIMMAIAH,
AGED ABOUT 51 YEARS,
CHAIRMAN,
KARNATAKA STATE POLLUTION CONTROL BOARD,
PARISARA BHAVAN, No.49,
CHURCH STREET, BENGALURU - 560 001.

...PETITIONER

(BY SRI. D R RAVISHANKAR., SENIOR ADVOCATE A/W
SMT.SIRI RAJASHEKAR., ADVOCATE)

AND:

1. THE GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA, BENGALURU - 560 001.
REP BY ITS SECRETARY.



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2. THE PRINCIPAL SECRETARY,
GOVERNMENT OF KARNATAKA,
DEPARTMENT OF FOREST,
ECOLOGY & ENVIRONMENT,
No.708, M S BUILDING, 7TH FLOOR,
NEAR VIDHANA SOUDHA,
DR.B.R.AMBEKDAR VEEDHI,
BENGALURU – 560 001.
3. KARNATAKA STATE CONTROL BOARD,
REP BY ADMINISTRATIVE OFFICER,
MR.R VENKATACHALAPATHY,
O/AT PARISARA BHAVAN, CHURCH STREET,
BENGALURU – 560 001.
4. MEMBER SECRETARY,
KARNATAKA STATE CONTROL BOARD,
O/AT PARISARA BHAVAN, CHURCH STREET,
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY., ADVOCATE GENERAL FOR
SRI. DEVARAJ ASHOK., HCGP FOR R1 & R2;
SRI. VIKRAM HUILGOL., SENIOR ADVOCATE A/W
SRI. MAHESH A CHOWDHARY., ADVOCATE FOR R3 & R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF
APPROPRIATE NATURE INCLUDING A WRIT IN NATURE OF
CERTIORARI TO QUASH THE COMMUNICATION BEARING
No.FEE 222 EPC 2023, DATED 10.10.2023 ISSUED BY THE 2ND
RESPONDENT VIDE ANNEXURE-E AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED
FOR ORDERS, THIS DAY, **CHIEF JUSTICE** PRONOUNCED THE
FOLLOWING:



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ORDER

These eight cases, six of them filed in PIL jurisdiction, regardless of the tenor of pleadings broadly raise the issue relating to the norms of appointment and the normative process of selection & appointment to the office of the Chairman of the Karnataka State Pollution Control Board (hereafter 'KSPCB'). It is relevant to state the principal prayers made in each of the petitions. They are as under:

- i) *In W.P.Nos.9526/2020 & 9923/2020 (GM-RES-PIL) , the prayer is for the quashment of the Government Order dated 19.06.2020 through which the State Government has issued the "Guidelines for nomination, Terms and conditions of service of Chairman, Members and appointment of Member Secretary of the Karnataka State Pollution Control Board under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974)". They also seek a direction to issue these guidelines afresh strictly adhering to the observations of the Apex Court made in Techhi Tagi Tara vs. Rajendra Singh Bhandari, (2018) 11 SCC 734. A prayer is made for setting aside the appointment made in terms of impugned guidelines.*
- ii) *In W.P.Nos.9500/2021 & 9897/2021 both (GM-RES-PIL), the principal prayer is for a direction to the State Government to notify the qualifications for the post of the*



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Chairman of KSPCB in terms of this court's order dated 08.10.2020 as entered in the pending W.P.No.9526/2020 c/w W.P.No.9923/2020 that is the cases mentioned in the immediately preceding paragraph. A prayer is also made to initiate a fresh process of appointment after the qualifications are prescribed.

- iii) In W.P.No.15179/2021 (GM-RES-PIL), the essential prayer is for a Writ of Mandamus to the State Government "to appoint the Chairman to KSPCB in conformity with the provisions of S.4(2)(a) of Water (Prevention & Control of Pollution) Act, 1974" and Guidelines dated 20.06.2020 as rectified by the Corrigenda dated 21.07.2020, 21.09.2020 and 06.11.2020. A prayer is also made for declaring these guidelines "as valid..."*
- iv) In W.P.No.19027/2023(GM-RES-PIL), is for a Writ of Quo Warranto against "the current Chairman Dr.Shanth Avarahalli" and to "prohibit" him from exercising his duties as the Chairman of KSPCB.*
- v) In W.P.No.23417/2023(GM-RES), filed by the present incumbent of the office of the Chairman of KSPCB, the prayer is for the quashment of the Communication dated 10.10.2023 which directed "to conduct the meeting of State Level Environment Committee (SLEC) with the composition of all Chief Environment Officer and Senior Environment Officer in charge of the concerned section and Member Secretary as the convener thereof..". The grievance of the petitioner appears to be against his non-*



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inclusion in the said Communication. He has also sought for the quashment of the letter dated 12.10.2023 issued by the Under Secretary to the Department of Forest, Ecology and Environment which mentions about the intended promotion & posting of the Chief Environment Officers from the cadre of Senior Environment Officers.

vi) In W.P.No.19569/2023 (GM-RES) is also filed by the present incumbent of the office of the Chairman of KSPCB for the quashment of the notification dated 31.08.2023 which by way of corrigendum cuts short his tenure as the Chairman on the premise that such appointment was made for the remainder of the statutory tenure and not the full tenure. He also seeks the quashment of Communication dated 26.07.2023 whereby, some enquiry is sought to be held against him.”

(II). After service of notice, the respective respondents have entered appearance through their advocates. State is represented by the learned Advocate General assisted by Additional Government Advocate/High Court Government Pleader. The KSPCB is represented by the learned Additional Advocate General assisted by its Panel Counsel. Learned Advocate General appearing for the State submits that the objections filed to petitioner’s to I.A.No.3/2023 in W.P.No.19569/2023 may be treated



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as the objections to the main matter. The KSPCB has also filed its independent objections in the said writ petition.

(III). We have heard the learned advocates appearing for the parties and perused the records. The Petitions that seek to lay a challenge to the Government Order dated 19.06.2020 whereby the Guidelines for selection & appointment of Chairman to the KSPCB being promulgated have become infructuous in view of the decision of a Coordinate Bench of this Court in W.P.No.9205/2020 between SMT. GEETHA MISRA vs. STATE & OTHERS, disposed off on 18.08.2020. The Bench having examined the provisions of Section 4 of the 1974 Act and Apex Court decision in TECHI TAGI TARA *supra*, repelled the challenge to the validity of said Guidelines. The discussion is found at paragraphs 4 to 8 of the said judgment. I has been observed at fag end of paragraph 8 “ ... We, therefore, do not find anything illegal in the guidelines laid down by the State Government”. In paragraph 9, it is further observed as under:



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"Subject to what is observed above, this is not a case where interference can be made with the guidelines issued by the State Government in terms of the decision of the Apex Court. Accordingly, the writ petition is disposed off."

Since challenge to the appointment of the Chairman was laid on the premise that the subject Guidelines were flawsome, now that too would *a fortiori* pale into insignificance. In view of all this, the prayers in W.P.Nos.9526/2020 & 9923/2020 have been rendered infructuous.

(IV). In W.P.No.15179/2021 filed by Parisara – Environmental Protection Organization the first prayer is for a declaration that the subject Guidelines promulgated vide Notification dated 19.06.2020 as amended by the Corrigenda dated 21.07.2020, 21.09.2020 & 06.11.2020 are valid. Added, pursuant to interim order dated 08.10.2020 made in companion W.P.Nos. 9526/2020 & 9923/2020, certain developments have taken place, which aspect will be discussed *infra*. The second prayer is for a direction to the State Government to make appointment to



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the post of Chairman of the KSPCB in conformity with the subject Guidelines. Since, challenge to the validity of Guidelines has been negated by the Division Bench, as already mentioned, the first prayer does not survive for consideration. Even the second prayer has also become infructuous inasmuch as, the vacancy in the post/office of the Chairman has been filled up with the present incumbent Mr. Shanth A Thimmaiah who happens to be the Petitioner in the companion W.P.No.19569/2023 & W.P.No.23417/2023.

(V). AS TO W.P.No.19027/2023:

(a) The challenge in this petition is to the appointment of the present incumbent Dr. Shanth A Thimmaiah as the Chairman of KSPCB. The principal ground of challenge is that the Guidelines of 19.06.2020 are not in consonance with the Apex Court decision in *TECHI TAGI TARA* and that the process of selection ought not to have been accomplished because of interdiction made by the Division Bench vide order dated 06.02.2021



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in W.P.No.9526/2020 whereby earlier interim order dated 08.10.2020 was to some extent modified. The vehement submission that the then ongoing selection process was liable to be halted because of these orders, is founded on certain observations made in para 17 of the interim order dated 06.02.2021 which read as under:

"Even if the State Government has already published advertisement for selecting the Chairman and the Selection Committee has completed the process, to avoid any controversy, it will be appropriate if a fresh process is conducted by notifying the qualifications as laid down in this order".

(b) It hardly needs to be stated that the observations made in court orders, more particularly interim orders cannot be construed as the statutory provisions. Sages of law have always maintained a difference between the construing of Court Orders and the interpretation of statutory provisions. What is said in UNION OF INDIA vs. MAJOR BAHADUR SINGH, 2005 SCC OnLine SC 1669 instructively runs as follows:



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"The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] Lord MacDermott observed : (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge..."

(c) The above observations at paragraph 17 of the interim order dated 06.02.2021 made in pending W.P.No.9526/2020 c/w W.P.No.9923/2020 (that are being heard in this batch of petitions) need to be construed not



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as an island provision divorced from rest of the observations that run into 18 more paragraphs. Even otherwise, the text & context of the said observations do not support the kind of construction sought to be placed on them. What the Coordinate Bench said was not to interdict the then ongoing selection process; it was more like a sensible suggestion so that there would be no scope for challenge to the culmination of selection process into appointment. If the Bench really intended interdiction of the ongoing selection process, it would have structured the said paragraph in an imperative language, which apparently it has not. Therefore, too much cannot be read into said observations.

(d) Another Coordinate Bench of this court vide order dated 6.9.2021 has observed as under:

"The petitioner (W.P.No.9500/2021) has filed the present petition being aggrieved by the public notice dated 21.7.2020 inviting applications for the post of Chairman, Karnataka State Pollution Control Board. The contention of the petitioner is that the aforesaid advertisement is contrary to the provisions of Section 4(2) of the Water



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*(Prevention and Control of Pollution) Act, 1974 and is also contrary to the law laid down by the Hon'ble Supreme Court in the case of Techhi Tagi Tara v. Rajendra Singh Bandari (C.A.No.1359/2017). Another writ petition i.e., W.P.No.9897/2021 is again against the same advertisement and W.P.No.15179/2021 is a petition for issuance of a direction to the State Government to conclude the process of appointment of Chairman at an early date. The facts of the case in W.P.No.9500/2021 reveal that a writ petition was filed i.e., W.P.No.27288/2019 challenging the appointment of the then Chairman Dr.K.Sudhakar, MLA, without framing the guidelines and in consonance with the law laid down by the Hon'ble Supreme Court and finally, guidelines were framed by the State Government on 19.6.2020. This Court has permitted the State Government to proceed ahead with the process of selection and the recommendations of the Selection Committee have been produced before us in a sealed cover. **In the considered opinion of this court, as prayed for by the learned counsel for the State, the State Government is permitted to proceed ahead with the process of selection, however, the selection shall be subject to the final outcome of the present writ petition and other connected writ petitions as there is no Chairman to Pollution Control Board since 2020...**"*

(Emphasis supplied)

It has not been demonstrated before us that the present incumbent Dr.Shanth A Thimmaiah lacked the eligibility



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criteria & qualification for being selected and appointed to the post in question. The said appointment was preceded by the exercise of the Search Committee headed by the highest Executive namely, the Chief Minister and therefore, in the absence of demonstration to the contrary, we cannot readily assume that the Committee has not done its job properly. Therefore, there is no merit in this Petition.

(VI). AS TO W.P.Nos.9500/2021 & W.P.No.9897/2021 AND W.P.NO.9526/2020 C/W W.P.NO.9923/2020:

(a) The prayer in W.P.Nos.9500/2021 & W.P.No.9827/2021 is essentially for the quashment of Public Notice dated 21.07.2020 whereby applications had been called for selection & appointment to the office of Chairman of KSPCB. Petitioners have also sought for a direction to the State Government to comply with the interim order dated 08.10.2020 handed in the companion W.P.No.9526/2020 c/w W.P.No.9923/2020. Both these petitions have been structured keeping in view the observations of the Apex Court in *TECHI TAGI TARA supra*,



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on which the very interlocutory order dated 08.10.2020 has been framed. The relevant paragraphs in the said order are reproduced below:

"In these two petitions, very important issues have been raised concerning the process of appointing the Chairman, Members and Member-Secretary to the Karnataka State Pollution Control Board (for short, "the said Board"). Considering the issues involved, we issue Rule Nisi. The respondents waive notice.

3. Coming to the prayers made in these two petitions, the common challenge is to the Guidelines issued by the State Government by an order dated 19th June, 2020. By the said Guidelines, qualifications have been laid down for nomination/appointment to the post of Chairman, Members and the Member-Secretary of the said Board. Clause (3) of the Guidelines in the Annexure to the Government Order dated 19th June, 2020 lays down the qualifications for the post of the Chairman of the said Board. Clause (4) lays down the maximum age limit for the post. Clause (5) provides for a Search-cum-Selection Committee for making a nomination to the post of the chairman. The procedure to be followed by the Search Committee is laid down in clauses (6) and (7). Clauses (8) and (9) relate to the appointment of the Member-Secretary to the said Board and nomination of non-official members.

4. For the sake of completion, we may note here that a writ petition was filed, being W.P. No.9205 of 2020 in this Court for challenging the same Government Order dated 19th June, 2020. It was decided on 18th August, 2020. Paragraph 3 of



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the said judgment and order shows that the substantive challenge before this Court was only to the constitution of the Search-cum-Selection Committee for making a nomination to the post of the Chairperson. In paragraph 8 of the said judgment and order, it was held that there was nothing illegal about the constitution of the Committee as per clause (5) of the guidelines annexed to the impugned order. However, this Court, while disposing of the petition, observed that the Committee is bound by the guidelines laid down by the Apex Court in its well known decision in the case of TECHI TAGI TARA v. RAJENDRA SINGH BHANDARI .

5. Coming back to the impugned order dated 19th June, 2020, as stated earlier, in paragraph 3 of the Guidelines annexed to the said order, the qualifications prescribed for appointment to the post of the Chairman have been laid down. Paragraph 3 reads thus:

“3. No person shall be eligible for being considered for nomination as the Chairman unless he/she:

Possesses a Master’s degree in Environment Science or a Master’s Degree in Environment Engineering or an equivalent degree or allied sciences from a recognized University or Institute and has knowledge and experience in areas related to environmental protection or has been a part of administration in a Government Department or Organization or University or Institute dealing with environmental issues (including issues of air and water pollution, waste management, natural resources management and environmental impact assessment).”



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8. After the further submissions were heard in both the petitions, yesterday a memo has been filed by the learned Additional Government Advocate containing a report of the Additional Chief Secretary to the Government, Department of Forests, Ecology and Environment and a report of the Principal Secretary, Department of Forests, Ecology and Environment. The Committee comprising of the said two officers appears to have gone into various reports which are referred in the decision of the Apex Court in the case of Techī Tagī Tara (supra).

10. With the assistance of the learned counsel appearing for the petitioners and the learned Additional Advocate General, we have considered in detail the issue of the qualifications of the members of the said Board, and in particular, the Chairman and the Member-Secretary...

11. It is a well settled position of law that the right to live in a pollution-free environment is a fundamental right guaranteed under Article 21 of the Constitution of India. That creates a corresponding obligation on the State as well as the agencies and instrumentalities of the State to ensure that different categories of pollution should be prevented.

13. On a conjoint reading of the three definitions, it is very clear that environmental pollution means pollution of water, air and land. Pollution would also include noise pollution created by several factors.

25. Thus, the Air Act, the Water Act and the said Act of 1986 and the aforesaid Rules framed under the said Act of 1986 operate in



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different areas though there may be some overlapping. What is important is, in the said three enactments and the Rules, a pivotal role has been assigned to the State Board and it can be safely said that vast powers have been conferred on the State Board for the implementation of the said three laws and the Rules which have been enacted for the protection of environment and ecology. In fact, if the powers and duties of the State Board under the aforesaid enactments and Rules are carefully examined, it can be said that the State Board is a watchdog in the matters of pollution. Prevention of pollution of various kinds is the responsibility of the State Board as can be seen from the aforesaid enactments.

26. As stated earlier, the said Board must have expertise of a higher standard in different technical areas such as air pollution, water pollution, pollution which may be caused by e-waste, pollution created by plastic as well as the issue of dealing with bio-medical waste, the issue of dealing with construction and demolition waste and most importantly, the issue of dealing with solid waste management. Thus, the said Board must consist of and must be manned by a person who, apart from having a good administrative capacity, should also have a substantial technical knowledge in various fields which are being dealt with by the said Board.

27. It is in this context, that the process of appointment of the members will have to be examined. In fact, the decision of the Apex Court in the case of Techi Tagi Tara (supra) deals with the issue of qualifications of the members of the Board in paragraph (3), the Apex Court has referred to Article 51-A (g) of the Constitution of India, which contains fundamental duty of every



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citizen to protect and improve the natural environment. It refers to 'who cares' attitude of the State Governments of several states. The Apex Court while dealing with a challenge to the order passed by the National Green Tribunal (for short the NGT) had recorded its dissatisfaction about the manner in which appointments were made to the State Pollution Control Boards. In the said decision, the Apex Court has referred to the recommendations and quotes of various Committees in detail. The Apex Court has also referred to the communications issued by the Ministry of Environment and Forests on this aspect and in particular, the communication dated 16th August, 2005 which in turn refers to the Report of the MGK Menon Committee which recommends that a person seeking appointment to the post of Member Secretary should possess a Post Graduate degree in Science or Technology and adequate experience of working in the area of environmental protection. The said letter refers to the decisions taken in the conference of the Ministry of Environment in which it was resolved that the State Boards shall be headed by technically competent persons and not by journalists, politicians or administrative Officers. After referring to the various reports, the Apex Court in paragraphs 34 and 35 has held thus:

34. The concern really is not one of a lack of professional expertise – there is plenty of it available in the country – but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't-care-less attitude, the environment and public trust are the immediate casualties. It is unlikely that



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

35. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless 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



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*as a Chairperson or a member of any
SPCB or is presently continuing as such.”*

28. As far as qualifications prescribed under the Water Act are concerned, we have already referred sub-section (2) of Section 4. We may now go back to the guidelines which is a part of the order dated 19th June, 2020. Sl.No.3 of the Guidelines prescribes the qualifications to the post of the Chairman. It provides that the person must have special knowledge or practical experience in respect of the 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. At Sl.No.3 it is merely mentioned that a person can be a part of the administration of the Government Department or Organization or an Industry or an Institute dealing with the environmental issues. The Section requires that a candidate should have knowledge and experience in administering institutions. Therefore, Sl.No.3 is not in conformity with Clause (a) of sub-section (2) of Section 4 of the Water Act and the corresponding provision in the Air Act.

29. Now, we go to the modified clause which is at Sl.No.8. We have reproduced the recommendations of the two-member Committee to modify the said clause which contemplates that the appointment of Member Secretary can be made from person in Indian Administrative Service (IAS) and Indian Forest Service (IFS) cadres in the scale of selection grade and above. Thus, the State Government wants to appoint a Member-Secretary only among the serving officers of IAS/IFS. Clause (f) of sub-section (2) of Section 4 of the Water Act does not require that the only officers of IAS/IFS can be appointed. Though the recommendations



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which are part of various Committees which are referred in the decision of the Apex Court recommend higher qualification for the post of Member- Secretary, the qualification prescribed is only of any bachelor's degree. In fact, the recommendation of MGK Menon Committee which is quoted with approval in the letter dated 16th August, 2005 issued by the Ministry of Environment and Forests addressed to the Chief Secretary of all the States, it is recommended that the incumbent to the post of a Member- Secretary should possess a Post Graduate degree in Science Engineering or Technology and should have adequate experience of working in the areas of environmental protection. There is no reason assigned by the two-member Committee why the said recommendation of possessing Post Graduate degree in Science, Engineering and Technology and having adequate experience of working in the areas of environment protection, has not been incorporated in the qualifications laid down by the State Government.

30. Considering the pivotal role played by the Member- Secretary, apart from possessing administrative skills, he should have vast knowledge in various fields and therefore, the recommendation was made that the incumbent should possess Post Graduate degree in Science, Engineering and Technology.

31. The second objectionable part is that contrary to what is provided in Clause (f) of sub-section (2) of Section 4 of the Water Act, the State Government wants that only persons belonging to IAS/IFS should be considered for the post of Member-Secretary. The same is contrary to the scheme of the Air Act and the Water Act. Any person who possesses the prescribed qualifications is qualified for the post of Member- Secretary. If



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IAS/IFS officers are appointed, due to exigencies, there will be frequent transfers of the said officers. Moreover, if the Member-Secretary is changed frequently, it will adversely affect the functioning of the said Board. Therefore, in our view, the qualifications which are prescribed by the State Government for the post of the Member-Secretary require reconsideration and experts in the field who have vast experience in the field cannot be excluded from consideration in the process of appointing the Member-Secretary. Moreover, it is necessary to ensure that the Member Secretary is allowed to discharge his duties for a minimum period of two to three years. If the officers occupying the post are changed frequently, it will adversely affect the functioning of the state/said Board(sic).

32. In our view, even the qualifications for the post of Chairman require reconsideration. As observed by the Apex Court in the case of Techī Tagī Tara (supra), persons who are appointed as the Chairman of the State Boards shall be persons having special knowledge or practical experience so that by their very presence, their expertise can be used for protecting the environment including air and water. In fact, in the light of the directions of the Apex Court, it was the duty of the State Government to prescribe educational qualifications for the applicants to the members of the said Board.

33. Considering the pivotal and very important role assigned to the said Board which is becoming vital with every passing day, it is necessary that the said Board is properly constituted and the persons with experience and knowledge in the field should be appointed as members. As regards the Chairman and the Member-Secretary, prima facie, much higher qualifications are required to be prescribed. Therefore, we direct the State



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Government to reconsider the whole issue and come out with properly drafted guidelines including proper qualifications to the post of Chairperson, Members and the Member-Secretary. We grant time till 5th November, 2020 to do so.

34. Let the petitions be listed on 6th November, 2020. Needless to add that, till the next date, no appointments shall be made to the post of Chairman, Members and Member- Secretary without seeking the leave of the Court.

35. If the qualifications are modified consistent with the decision of the Apex Court, perhaps, a fresh process of nomination/appointment will have to be conducted.”

(b) Learned Advocate General appearing for the State draws our attention to the subsequent interim order dated 06.02.2021 rendered in W.P.Nos.9526/2020 c/w W.P.No.9923/2020 whereby the earlier interlocutory order dated 08.10.2020 has been slightly modified keeping in view the Government’s Corrigendum dated 21.09.2020. What is observed at paragraphs 14, 15 & 16 in the Modification Order being relevant, is also reproduced:

“14. Therefore, to summarize, on conjoint reading of clause (a) of sub-section (2) of section 4 of the Water Act as well as clauses (2) and (3) of the said Government Order, a candidate must satisfy the following



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requirements for being appointed as the Chairman of the State Pollution Control Board:

(a) He must satisfy the requirement of clause (a) of sub-section (2) of Section 4. When clause (a) refers to experience in administering institutions, it means that the person concerned must have experience as an administrator of such institutions;

(b) Even if a person satisfies the requirement of clause (a) of sub-section (2) of Section 4, he must satisfy the requirement of clause (3) of the Government Order dated 19th June 2020 of possessing the educational qualifications mentioned therein. Merely possessing the educational qualifications as provided in clause (3) will not be sufficient. Such person should have either an experience in the areas relating to environmental protection or should be a part of the administration in Government Department or Organization or University or Institute dealing with environmental issues. Only a person who has experience of actually administering such Government Department or Organization or University or Institute will satisfy the said criteria.

(c) Apart from the aforesaid qualifications, the Selection Committee must consider that the person who is selected to occupy the post of Chairman should be such that he will add value and stature to the State Pollution Control Board by his very presence so that he can



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utilize his experience in preserving and protecting the environment.

15. To the above extent, the order dated 8th October 2020 and observations made thereunder in paragraph-28, stand modified. Hence, the State Government will be entitled to proceed with the process of appointment to the post of Chairman Needless to add that the process shall be conducted in a fair and transparent manner, keeping in mind the requirements laid down by the Apex Court.

16. The prayer as far as qualifications of Members is concerned, stands rejected."

(c) As already mentioned above, the challenge to vires of the Guidelines dated 19.06.2020 has been negatived by the Coordinate Bench in W.P.No.9205/2020 (GM-RES-PIL). The submission of these Petitioners that the Coordinate Bench in its orders dated 08.10.2020 and 06.02.2021 had specifically interdicted the selection process that was already half way through and further had instructed to undertake a fresh selection process, is treated & rejected *infra*. The subject recruitment process having been accomplished after due selection process, the appointment has been done and that the appointee who happens to be the Petitioner in the companion



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W.P.No.19569/2023 & W.P.No.23417/2023 has been officiating now for more than a year. Suffice it to say that this court is in complete agreement with the views expressed in the order dated 08.10.2020 as modified by the subsequent order dated 06.02.2021, which one can formally call as 'interlocutory' because they are passed in the pending Writ Petitions. However, they are well considered orders of the Coordinate Bench with a lot of elements of finality, cannot be disputed. In fact, the stakeholders, more particularly, the State Government has treated them as such and therefore, has issued Orders/Corrigenda for their implementation by modifying/adding the norms to the 19.06.2020 Guidelines.

(d) The Board plays pivotal role under a plethora of legislations both Parliamentary and provincial: Parliamentary legislations to name a few are, The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986, Mines and Minerals



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(Development and Regulation) Act, 1957, The Forest (Conservation) Act, 1980, The Motor Vehicles Act, 1988, etc. The Provincial legislations to cite a few are: The Karnataka Municipal Corporations Act, 1976, The Karnataka Town and Country Planning Act, 1961, The Karnataka Urban Development Act, 1987, The Karnataka Gram Swaraj and Panchayat Raj Act, 1993, etc. A set of Rules/Regulations have also been promulgated under both the Central and State Acts, hardly needs to be mentioned. A perusal of these two orders shows the enormous time and intellectual investment made by the Coordinate Bench, of course, with the able assistance of the Bar, in framing them. Nothing more is left for us to do than to respectfully observe that these Writ Petitions merit disposal with the reiteration of the said orders. Therefore, we are of the considered view that the Search cum Selection Committee whilst accomplishing the task 'must consider' that the aspirant for the post of Chairman should be such that if selected, he will add value & stature to the institution of KSPCB. Therefore, we make it clear that



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hereafter this shall be a superadded norm to the extant ones. With the observations and directions made in the said two orders, all these four Writ Petitions can be disposed off.

(e) The above having been said, we advert to the Government Order No.FEE 230 EPC 2017 Bengaluru, Dated:31.08.2023, a copy whereof is produced as document No.24 in the convenient compilation filed by the learned AG on 7.9.2023. This has been issued in the light of observations in *TECHI TAGI TARA supra* and the interlocutory *'order dated 6.2.2021 in W.P.no.9526/2020'*. Learned Additional Advocate General Mr.Vikram Huilgol draws our attention to the ANNEXURE to this latest Government Order which promulgates the norms contemplated under the aforesaid two orders of the Coordinate Bench and therefore, nothing more needs to be done in these Writ Petitions. We have some reservation in accepting this submission. The norm of 'value and stature



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addition' is enacted in clause 7 of the ANNEXURE, is true.

It reads:

"The Search cum Selection Committee shall go through all the eligible applications and select suitable candidate who adds value to the State Pollution Control Board, after briefly recording the reasons."

However, how compliance of this requirement would be ensured, is not made normative and thus, a lot of subjectivity galores. This is not a happy thing. In matters like this, diminution of discretion is ideal, *lest* its abuse should happen. Therefore, the government should evolve a set of norms even in this regard, after speaking to the experts. Otherwise, inevitably, one has to accept the version of the Search cum Selection Committee which may put the ritualistic compliance in glorious language and the ascertainment of its truthfulness becomes difficult, when challenge is laid. Much is not necessary to specify.

(f) There is yet another lacuna in the freshly issued Guidelines dated 31.08.2023. Paragraph 10 of the ANNEXURE provides for *ex officio* assumption of the office



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of Chairman by the Addl. Chief Secretary to or the Principal Secretary of the Forest, Ecology and Environment Department, when vacancy occurs and that his tenure as such shall continue till a new Chairman duly nominated by the State Government enters upon the office. However, paragraph 11 gives a wide discretion to the government for not filling the 'casual vacancy' by way of nomination and this it can do without assigning any reason. Such a *carte blanche* is undesirable, to say the least, 'reasoned decisions' being the requirement of a Welfare State. Therefore, the term '*without assigning any reason*' appearing in paragraph 11 cannot be sustained. Further, the expression '*for reasons to be recorded in writing*' needs to be introduced in the stead. We emphasize that the 'casual vacancy', whatever be the reason for its accrual, in the office of the Chairman of KSPCB shall not be occupied by the functionaries mentioned in clauses 10 & 11 for a period beyond six months and therefore, the normative appointment by way of selection has to be made without brooking delay. Accordingly, the said two



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paragraphs need to be rephrased by the State Government.

(VII). AS TO W.P.No.19569/2023 & W.P.No.23417/2023:

(1) In both these petitions, Petitioner happens to be the present incumbent of the office of the Chairman of KSPCB. In W.P.No.19569/2023, as was filed originally, a prayer is made *inter alia* for the quashment of the enquiry initiated against him in respect of certain allegations as to breach of provisions of the Karnataka Transparency in Public Procurements Act, 1999 and the Rules promulgated thereunder. We are told at the Bar that this enquiry proceeding having been concluded, a report has already been submitted to the Government in a sealed cover. At this stage, we are not inclined to grant indulgence in the matter to the extent that the challenge is to the initiation of enquiry proceedings inasmuch as the Petitioner will have an opportunity of offering his views on the enquiry report; further, he can also lay a challenge to any adverse order that may be passed on the basis of the report, of



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course after considering his version thereto. Thus, the challenge to the enquiry is premature and therefore, no relief in that regard can be granted.

(2) The above being said, we note the amendment made to the Writ Petition with leave of this court whereby challenge is laid to the Notification issued by the Government and Corrigendum issued by the Principal Secretary to the Government, both dated 31.08.2023 which have the effect of curtailing the tenure of Petitioner's appointment to 04.03.2022, with retrospective effect, when it ought to be up to 14.11.2024. The amended petition has been filed on 27.09.2023 with the leave of court. He has also filed W.P.No.23417/2023 for laying a challenge to the communication dated 10.10.2023 issued by the Secretary of KSPCB whereby the Petitioner has been excluded from the State Level Enforcement Committee meeting, because of the curtailment of his tenure. It was the vehement submission of learned Sr. Advocate appearing for the Petitioner that the very



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Notification of appointment dated 15.11.2021 was for a period of three years; the said appointment was not for the remainder of the term of the earlier incumbent; the selection and appointment was for the full term and therefore, the same cannot be curtailed merely because a rival political party has come to power after fighting the General Elections to the State Assembly successfully. The Statement of Objections have been filed resisting the Writ Petitions.

(3) Learned Advocate General appearing for the State contended that the appointment of the Petitioner as the Chairman was for the remainder of the tenure of the office because of the 'casual vacancy' that arose after his predecessor vacated the office; however, the Notification dated 15.11.2021 whereby this Petitioner was nominated as the Chairman, had by mistake specified 14.11.2024 as the date till which he would have the tenure; therefore, the Corrigendum followed by the Notification both dated 31.08.2023, have been rightly issued. He repels the



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contention of malafide, both legal & factual. He drew our attention to section 5(6) of the 1974 Act and section 21 of the Karnataka General Clauses Act, 1899 in support of this stand. Other contesting respondents too made their submission.

(4) Let us examine the rival contentions advanced at the Bar. Section 5 of the 1974 Act speaks of terms & conditions of service of members of KSPCB. Sub-sections (1) & (6) of this provision which are relevant to the case at hands have the following text:

"(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 his nomination:

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

(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 whose place he was nominated."



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In view of these sub-sections, a question arises whether the subject selection & appointment are *qua* the 'casual vacancy' or otherwise. If the appointment was made to fill the casual vacancy as such, much discussion was not warranted, the Parliamentary intention enacted in sub-section (6) is as clear as *gangetic waters*. Such an appointment would indisputably be for the remainder of the term. However, if the appointment is intended and made in usual course, it would be altogether a different scenario. This needs to be ascertained by adverting to a host of factors that had entered the fray of selection that culminated into appointment.

(5) Under the statutory Scheme, the appointment to the post of Chairman is by way of nomination preceded by selection to be undertaken by the Search cum Selection Committee headed by the Chief Minister. The Public Notice dated 21.07.2020 was issued in two news dailies calling for applications for the post of Chairman. It is pertinent to reproduce one of them:



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"Government of Karnataka
Forest, Ecology and Environment Department
(Ecology & Environment)
Room No. 704, 7th Floor, 4th Gate, M.S. Building, Bengaluru- 560001.

No. FEE 143 EPC 2020

Date : 21.07.2020

PUBLIC NOTICE

Subject: Nomination for the post of Chairman to Karnataka State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) Inviting applications -reg.

- 1. Applications are invited from eligible candidates for nomination to the post of Chairman, Karnataka State Pollution Control Board (KSPCB), Bengaluru in the prescribed format.*
- 2. The KSPCB was established under provisions of the Water (Prevention and Control of Pollution) Act, 1974. The KSPCB exercises functions related to prevention and control of pollution. The Chairman shall be a full-time incumbent.*
- 3. The following are the terms and conditions for the post of Chairman, KSPCB, Bengaluru:*

<i>1. The salary and other emoluments</i>	<i>The salary and other emoluments of the Chairman shall be as per the orders of the other Department of Public Enterprises, Government of Karnataka issued from time to time.</i>
<i>2. Method of recruitment</i>	<i>Nomination</i>
<i>3. Terms and conditions</i>	<i>The Chairman will be Governed by the Terms and conditions as prescribed in the Water (Prevention and Control of Pollution) Act, 1974, rules made there under, guidelines issued by the State Government vide Government order No FEE. 230 EPC 2017 dated 19.06.2020 read with the corrigendum dated:21.07.2020 and the terms and conditions to be issued by the State Government from time to time.</i>



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<p>4. a) <i>Qualification & Experience</i></p>	<p><i>A Master's degree in Environment Science or a Master's Degree in Environment Engineering or an equivalent degree or allied sciences from a recognized University or institute and has knowledge and experience in areas related to environmental protection or has been a part of administration in a Government Department or Organization or University or Institute dealing with environmental issues (including issues of air and water pollution, waste management, natural resources management and environmental impact assessment)</i></p>
<p>b) <i>Desirable qualification</i></p>	<p><i>Special knowledge or practical experience in respect of matters relating to environmental protection or knowledge and experience in an institution dealing with the matters aforesaid.</i></p>
<p>5. <i>Age limit</i></p>	<p><i>The maximum age limit for nomination of chairman shall be, not exceeding 62 years as on the last date for the receipt of applications.</i></p>

4. The details of the application format are available on the website of the Forest, Ecology and Environment Department <https://forest.karnataka.gov.in/> and Karnataka State Pollution Control Board, <http://kspcb.gov.in/>.

5. Interested and eligible candidates are requested to send their applications (in 4 sets) in the format prescribed, so as to reach by **6th August 2020 before 5.30 PM** at the following address

Shri Muralidhar S. Tallikeri,
 Under Secretary to Govt (Ecology & Environment)
 Forest, Ecology and Environment Department,"

The above Public Notice mentions 1974 Act and obviously no specific provision thereof is quoted. To any reasonable



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aspirant to the post, it gives a legitimate impression that the selection to be followed by appointment was not for filling the 'casual vacancy' but it was for vacancy. That itself figures as a factor with the candidates in deciding whether to stake claim for appointment or not. This is on the line of the doctrine of legitimate expectation.

(6) Secondly, the Search cum Selection Committee comprises of high functionaries of the Executive: Chief Minister is the Chairman *ex officio* and Minister for Forest, Ecology and Environment happens to be the Vice Chairman *ex officio*. The Committee held its deliberation on 11.09.2020. There were as many as 106 applications of which 17 were found ineligible for want of requisite educational qualification; five applicants were age barred and four applications were time barred. Thus, eighty applications availed for consideration. After due deliberation a short list containing seven names was prepared and the name of Petitioner figured at the top. Therefore, he came to be selected after assigning reasons.



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(7) The relevant part of the selection proceedings reads as under:

"After detailed deliberation, the Committee decided to select Dr. Shanth Avverahalli Thimmaiah, E-516, Naidile Residency, Gottigere, Bannerghatta Road, Bengaluru - 560083 for the following reasons:

He has secured the highest points in the evaluation i.e., 71.9; possesses the requisite qualifications i.e., Post Graduate degree in Industrial Pollution Control from a reputed institution, NITK, Surathkal and he has got a Ph.D. in Socio-economic and Environmental Impact Studies which is a relevant field for environment. He stands out amongst the candidates considered as he possesses special knowledge and practical experience in maximum areas in respect of matters relating to environmental pollution and has work experience in the following fields.

- 1) Sustainable mining, Environment Management Plan, Reclamation and Rehabilitation of mines.*
- 2) Control/mitigation related to air, water and noise pollution.*
- 3) Preparation of disaster management plan*
- 4) Environment Impact Assessment.*
- 5) Management and standard operating procedure for laboratories.*
- 6) Preparation of "Carrying Capacity Study" report.*
- 7) Coastal Zone Management studies.*



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Further, it was noted that he has administrative experience, as a Board member of an institution of repute dealing with environmental issues including issues of air and water pollution, waste management, natural resource management and environment impact assessment. Finally, the Committee was of the opinion that he has got the sense of vision and expertise to implement various laws relating to pollution control.

In view of the above facts and circumstance, the Committee decided to nominate Dr. Shanth Avverahalli Thimmaiah as the Chairman, Karnataka State Pollution Control Board."

It is notable that a reading of the entire selection proceedings nowhere suggests that the exercise was undertaken for filling the 'casual vacancy'. One can safely assume that it was for filling the regular vacancy.

(8) After selection, the Notification dated 15.11.2021 nominating the Petitioner as the Chairman of the KSPCB came to be issued. The same in the vernacular reads as under:

"ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ:ಅಪಜೀ 143 ಇಪಿಸಿ 2020 ಕರ್ನಾಟಕ ಸರ್ಕಾರ ಸಚಿವಾಲಯ

ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ,

ಬೆಂಗಳೂರು, ದಿನಾಂಕ:15.11.2021



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ಆಧಿಸೂಚನೆ

ಡಾ|| ಶಾಂತ ಅಪ್ಪೇರಹಳ್ಳಿ ತಿಮ್ಮಯ್ಯ ಇ-516, ನೈದಿಲೆ ರೆಸಿಡೆನ್ಸಿ, ಗೊಟ್ಟಿಗರೆ, ಬನ್ನೇರುಘಟ್ಟ ರಸ್ತೆ, ಬೆಂಗಳೂರು - 560 083 ಇವರನ್ನು ಜಲ (ಮಾಲಿನ್ಯ ನಿವಾರಣೆ ಮತ್ತು ನಿಯಂತ್ರಣ) ಕಾಯ್ದೆ 1974ರ ಅನುಚ್ಛೇದ 4(2) ರನ್ವಯ ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಮತ್ತು ಮುಂದಿನ ಆದೇಶವರೆಗೆ ಹಾಗೂ ಗರಿಷ್ಠ ಮೂರು ವರ್ಷಗಳ ಅವಧಿಗೆ ಅಂದರೆ ದಿನಾಂಕ:14.11.2024 ರವರೆಗೆ ಕರ್ನಾಟಕ ರಾಜ್ಯ ನಿಯಂತ್ರಣ ಮಂಡಳಿಯು ಅಧ್ಯಕ್ಷರನ್ನಾಗಿ ನಾಮ ನಿರ್ದೇಶನ ಮಾಡಿ ಆದೇಶಿಸಲಾಗಿದೆ.

ಈ ನಾಮ ನಿರ್ದೇಶನವು ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ರಿಟ್ ಅರ್ಜಿ ಸಂಖ್ಯೆ:9500/201, 9526/2020, 8883/2020, 9923/2020, 9897/2021 ಹಾಗೂ 15179/2021 ರಲ್ಲಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ನೀಡುವ ಅಂತಿಮ ತೀರ್ಪಿಗೆ ಒಳಪಟ್ಟಿರುತ್ತದೆ.

ಈ ನಾಮ ನಿರ್ದೇಶನಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಷರತ್ತು ಮತ್ತು ನಿಬಂಧನೆಗಳ ಆದೇಶವನ್ನು ಪ್ರತ್ಯೇಕವಾಗಿ ಹೊರಡಿಸಲಾಗುವುದು.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

(ಮುರಳೀಧರ ಎಸ್ ತಳ್ಳಿಕೇರಿ)
ಸರ್ಕಾರದ ಆಧೀನ ಕಾರ್ಯದರ್ಶಿ,
(ಜೀವಿಪರಿಸ್ಥಿತಿ ಮತ್ತು ಪರಿಸರ)
ಅರಣ್ಯ ಜೀವಿಪರಿಸ್ಥಿತಿ ಮತ್ತು ಪರಿಸರ ಇಲಾಖೆ.”

What is significant to note is that this Notification mentions only section 4(2) of the 1974 Act and that section 5(6) is conspicuously absent. Ordinarily, one need not be swayed away by the mentioning, non-mentioning or wrong



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mentioning of the statute or its provisions in such instruments. What one has to see is their substance and not the form. This Notification specifically states that the appointment is 'until further orders' and for a maximum period of three years. Very notably, it mentions 14.11.2024 as the date up to which the appointee shall hold the office. It also refers to the companion Writ Petitions and makes the appointment subject to their outcome, is beside the point.

(9) We have also perused the text of earlier Notifications dated 18.9.2012, 21.12.2015 & 5.3.2019 which specifically mention the full tenure of three years. Their linguistic content accords with that of Notification dated 15.11.2021. In contrast, the Notifications making appointment to fill the 'casual vacancy' specifically mention section 5(6) of the 1974 Act and refer to remainder of the period; added, the expression 'for a period of three years' is conspicuously absent in all of them. These Notifications are dated 20.06.2019,



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21.09.2019 & 30.12.2019. Had it been the intent of the government that Petitioner was being appointed to the 'casual vacancy', the same would have been expressly or implicitly stated in the Public Notice, in the proceedings of the Search cum Selection Committee or at least in the Notification appointing him as the Chairman of KSPCB.

(10) The contention of learned Advocate General that the mistake had crept in mentioning 14.11.2024 in the appointment notification, when it ought to have been 4.3.2022, is bit difficult to countenance. We are not sure that section 21 of the 1899 Act was invocable. That provision is not mentioned in the impugned Corrigendum and the Notification, both dated 31.08.2023. How all of a sudden, this 'mistake' was discovered, by whom and when, remain enigmatic. After General Elections to the Legislative Assembly in May 2023, a 'registered & recognized National Political Party' that was in Opposition earlier, returned to power, is a matter of public record. Within three months or so, the impugned Corrigendum



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followed by the Notification, both dated 31.08.2023 have been issued. No opportunity of hearing was provided to the present incumbent of the office nor any explanation for not affording the same, is forthcoming from the pleadings of the State. The rule of continuity of government is recognized by our Constitution. A political party comes to power and goes, yielding place to the new, periodic elections being a basic feature of our constitutional polity vide **INDIRA NEHRU GANDHI vs. RAJ NARAIN**, AIR 1975 SC 2299. That transition does not disrupt the rule of continuity. This is not to say that there would be no scope for rectification of the mistake allegedly committed by the party in power earlier. But such a mistake needs to be demonstrated and its correction should be shown to have been accomplished by following due process of law. Otherwise, it gives scope for the allegation of legal malafide, if not factual.

(11) There is yet another aspect to the matter. Learned Advocate General is right in contending that sub-



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section (6) of section 5 of the 1974 Act provides for the appointment to the 'casual vacancy' only for the remainder of the term of the earlier incumbent. The said provision reads as under:

"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 whose place he was nominated."

A literal interpretation of this provision at the first blush gives an impression that it is mandatory. However, merely because a statute employs the word 'shall', one cannot readily jump to such a conclusion. Had this provision employed a negative terminology such as '*No appointment to fill the casual vacancy would be for the full term of three years*' or the like, we would have appreciated the ingenious argument of learned AG. We notice such a terminology in sub-section (2) of section 6 which reads as under:

"No order of removal shall be made by the Central Government or the State Government, as the case may be, under this section unless the member concerned has been given a



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reasonable opportunity of showing cause against the same."

Such a negative terminology, we notice in other provisions of 1974 Act, e.g., section 11, etc. We hasten to add that, our view should not be construed that even an appointment made to the 'casual vacancy' would be for the full term i.e., three years; indisputably, such an appointment would enure for the remainder of the tenure. What we are mentioning is about the choice of the government to go for the appointment to fill the 'casual vacancy' or to fill the 'regular vacancy', even when the 'casual vacancy' avails. The text & context of section 5(6) does not exclude such a construction. All this strengthens our assumption that the selection & appointment of the Petitioner Dr. Shanth A. Thimmaiah was not to the 'casual vacancy' and therefore, the impugned Corrigendum and the Notification that are inarticulately premised on the 'casual vacancy', are unsustainable and therefore, liable to be voided.



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In the above circumstances, we dispose off all these petitions with the following directions:

ORDER

[i] A Writ of Mandamus issues to the respondent-State Government to reframe Clauses 7, 10 & 11 in the ANNEXURE to the Government Order No.FEE 230 EPC 2017 Bengaluru, Dated:31.08.2023, in terms of our observations at Paragraph (VI) of this judgement and report compliance to the Registrar General of the court, within an outer limit of three months.

[ii] The challenge to the selection, nomination and appointment of Dr.Shanth A. Thimmaiah as the Chairman of the KSPCB pursuant to Notification No.FEE 143 EPC 2020 dated 15.11.2021, is liable to be and accordingly, rejected.

[iii] The challenge by the petitioner Dr.Shanth A. Thimmaiah to the Corrigendum E.No.FEE 143 EPC 2020 dated 31.08.2023 and Government Order No.FEE 143 EPC 2020 dated 31.08.2023 is favoured and a Writ of Certiorari



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issues quashing the same. As a consequence, his tenure as the Chairman of the KSPCB is secured till 14.11.2024.

[iv] Petitioner Dr.Shanth A. Thimmaiah's challenge to the communication No.AAPAJI/169/EPC/2023 dated 26.07.2023 whereby, enquiry is initiated against him for the alleged lapses, being devoid of merits, is liable to be and accordingly, dismissed. As a consequence, the said enquiry shall be accomplished in accordance with law.

Costs made easy.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb/cbc,
List No.: 1 Sl No.: 11