GAHC010088832023

2026:GAU-AS:16525-DB

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

Case No. : PIL/32/2023

NOC FOUNDATION
NEW OPPORTUNITY FOR CHILDREN,
AN NGO OF COMPREHENSIVE WELFARE WITH THE PRIMARY FOCUS ON THE PROBLEMS OF THE POOR IN THEIR STRUGGLE TO OBTAIN A LIFE OF JUSTICE AND DIGNITY. PROVIDE FREE EDUCATION, ENVIRONMENT STABILIZATION, FOOD SECURITY AND EMPOWERMENT OF THE COMMUNITY AND FOR THE DEVELOPMENT OF DISADVANTAGED CHILDREN/ WOMEN,
HAVING NITI AYOG UNIQUE ID NO. DL/2017/0156468, REPRESENTED BY ITS FOUNDER AND GENERAL SECRETARY,
JITENDRA KUMAR KUKHI,
HOUSE NO. 803, SUNLIGHT COLONY-II, ASHRAM,
NEW DELHI- 110014.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT,
ASSAM SECRETARIAT, A- BLOCK,
3RD FLOOR, DISPUR, GUWAHATI- 781006.

2:THE POLLUTION CONTROL BOARD
ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021

REPRESENTED BY ITS CHAIRMAN.

3:THE MEMBER SECRETARY
POLLUTION CONTROL BOARD

ASSAM
BAMUNIMAIDAM
GUWAHATI- 781021.

4:M/S M M CARBON PRODUCTS PVT LTD
REPRESENTED BY ITS DIRECTOR
SMT DIPIKA BORA

AGED ABOUT 64 YEARS

WIFE OF SRI HIRANYA BORA

RESIDENT OF TARUN NAGAR
BYE LANE NO. 4

P.O.- DISPUR
P.S.- BHANGAGARH

GUWAHATI- 781005

AND HAVING ITS REGISTERED OFFICES AT THE SAME AFORESTATED ADDRESS

Advocate for the Petitioner : MR. K N CHOUDHURY, MS N MAHANTA,N GAUTAM

Advocate for the Respondent : GA, ASSAM, MR T CHAKRABORTY(R-4),MR K TALUKDAR (R-4),MS S SHARMA (R-4),MR A ATREYA (R-4),SC, PCB

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE PRANJAL DAS

For the petitioner : Mr. K.N. Choudhury, Sr. Adv.
: Mr. R.J. Das.
For respondents : Mr. S. Baruah.
: Mr. D. Das, Sr. Adv.
: Mr. A. Atreya.

Date on which judgment is reserved : 17.07.2026

Date of pronouncement of judgment : 11.11.2026

Whether the pronouncement is of the operative part of the judgment? : No

Whether the full judgment has been Pronounced? : Yes

JUDGMENT AND ORDER

(*CAV*)

(K.R. Surana, J.)

Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. R.J. Das, learned counsel for the petitioner. Also heard Mr. S. Baruah, learned standing counsel for respondent no.2 and 3; Mr. D. Das, learned senior counsel, assisted by Mr. T. Chakraborty and Mr. A. Atreya, learned counsel for respondent no.4.

2) By filing this public interest litigation under Article 226 of the Constitution of India, the petitioner, which is a non-governmental organisation, has agitated its grievance by alleged environmental degradation and pollution caused in Amingaon, under Kamrup District, by permitting setting up of 'red' category polluting industrial unit.

3) In brief, the submissions made by the learned senior counsel for the petitioner is as follows:-

a. It was submitted that the respondent no. 2 and 3 had allowed the respondent no. 4 to set up and establish a 'red' category polluting industrial unit at Export Promotion Industrial Park, Amingaon ("EPIP, Amingaon" for short) by extending the validity of a *Provisional Consent to Establish*, which had expired 9 (nine) years ago.

b. It was submitted that the said action of the respondent nos. 2 and 3 is in violation of the Air (Prevention and Control of Pollution) Act, 1981

and the notification no. WB/GUW/T- 3521/17-18/22 dated 17.02.2018, by which due to pollution level caused by the *Calcinated Petroleum Coke* (hereinafter referred to as "CPC" for short) and *Low Ash Metallurgical Coke* industries in the surrounding areas, it was decided not to allow any further expansion of the existing as well as new CPC unit and *Low Ash Metallurgical Coke Industries* within the State of Assam. However, the existing units were permitting to run their industries with all pollution control devices which are to meet the standard as stipulated by the Central Pollution Control Board.

c. Accordingly, it has been submitted that the petitioner has assailed the validity of the impugned letter no. WB/GUW/T-2276/12-13/57/954 dated 10.12.2012, by which *Provisional Consent to Establish* (hereinafter referred to as "*PCTE*" for short) was granted to the respondent no.4 for their expansion of calcination unit with production capacity of 12,000 MT per annum at EPIP, Amingaon. It is the case of the petitioner that the said *PCTE* was valid for one year and thus, expired on 09.12.2013.

d. On 24.03.2021, the respondent no. 4 had submitted on-line application for seeking fresh *Consent to Establish* (hereinafter referred to as "*CTE*" for short) for establishing a CPC unit at EPIP, Amingaon. However, the respondent nos. 2 and 3, based on the said application, seeking a fresh *CTE*, instead, extended the validity of the *PCTE*, which had expired 9 (nine) years ago.

e. The respondent no.3 had issued a notification no. WB/GUW/T-3521/17-18/22 dated 17.02.2018, by which due to pollution level caused by the CPC and Low Ash Metallurgical Coke industries in the

surrounding areas, it was decided not to allow any further expansion of the existing as well as new CPC unit and *Low Ash Metallurgical Coke Industries* within the State of Assam. However, the existing units were permitting to run their industries with all pollution control devices which are to meet the standard as stipulated by the Central Pollution Control Board.

f. Accordingly, it has been submitted that due to the aforesaid notification dated 17.02.2018, the respondent nos. 2 and 3 could not have issued any new *CTE*, they had extended the *PCTE* of the respondent no.4, which had expired 9 (nine) years ago as on 09.10.2013. It is the further case of the petitioner that notwithstanding the ban on setting up any new *CPC* unit and expansion of existing *CPC* units, the *PCTE*, which had expired on 09.10.2013, could not have been lawfully extended any further.

g. Hence, it has been submitted that the action of the respondent nos. 2 and 3 is vitiated by arbitrariness and illegality and clearly manifest an unholy nexus between the respondent no.2 and 3 regulator and the respondent no.4.

4) The learned counsel for the respondent nos. 2 and 3 has submitted as follows:-

a. At the outset, the *locus standi* of the petitioner to maintain the present PIL has been questioned.

b. It was submitted that the respondent no.4 had established and set-up a *CPC* manufacturing industry at Amingaon in Kamrup District.

c. On 25.10.2006, the Pollution Control Board, Assam (respondent no.2

and 3) had issued a *PCTE/ No-objection Certificate* in favour of the respondent no.4 for setting up an Electrode Carbon Paste Unit at Export Promotion Industrial Park, Amingaon ("EPIP, Amingaon" for short). Subsequently, *Consent to Operate* was also issued by the respondent nos. 2 and 3 for the said unit, which was extended from time to time.

d. On 10.12.2012, the respondent nos. 2 and 3 had issued a *Provisional Consent to Establish* a Calcination Unit with production capacity of 12,000 MT per annum for the CPC unit to be set up at EPIP, Amingaon.

e. The respondent no.3 had issued a notification no. WB/GUW/T-3521/17-18/22 dated 17.02.2018, by which due to pollution level caused by the CPC and Low Ash Metallurgical Coke industries in the surrounding areas, it was decided not to allow any further expansion of the existing as well as new CPC unit and *Low Ash Metallurgical Coke Industries* within the State of Assam. However, the existing units were permitting to run their industries with all pollution control devices which are to meet the standard as stipulated by the Central Pollution Control Board.

f. The Environment and Forest Department, Government of Assam, had issued a Gazette notification dated 20.07.2018, thereby prohibiting the use of Pet Coke in all the industrial units within the district of Kamrup (M), in all forms as a fuel for any purpose.

g. It was submitted that on 12.03.2019, the respondent no.4 had made first on-line application for *CTE* of a calcination unit as the *PCTE* had lapsed. It has been submitted and explained that the respondent no.4

could not renew it or operationalize the plant due to industry down-turn.

h. On 05.04.2019, the respondent no.2 had issued a notification in exercise of power under Section 19(3) of the Air (Pollution and Control of Pollution) Act, 1981 and Sections 3 and 4 of the Environment (Protection) Act, 1886, thereby superseding the earlier notification dated 17.02.2018. By the said notification, the usage of both domestic and imported pet coke as fuel in the State of Assam was banned and the import of pet coke was banned for industries for uses other than as feedstock in their manufacturing process.

i. Thereafter, on 28.08.2019, the respondent no. 4 had made their first on-line application for issue of *CTE* of the calcination unit, which was accompanied by 2 (two) demand draft bearing no.767240 dated 26.08.2019 and 767244 dated 29.08.2019, for a total sum of Rs.1,00,000/- (Rupees one lakh only). Accordingly, a unique application identification number was issued to respondent no.4. It has been projected that as per the mandate of Section 21(4) of the Air (Pollution and Control of Pollution) Act, 1981, the said application was required to be decided within 4 (four) months.

j. On 13.02.2020, the respondent no.2 and 3 had issued a notification in exercise of power under Section 5 of the Environment (Protection) Act, 1986, thereby cancelling the earlier notification dated 05.04.2019.

k. It has been submitted that the first application dated 28.08.2019, made by respondent no. 4 could not be processed due to migration to a different portal. Accordingly, the respondent no. 4 had submitted

their second application dated 24.03.2021, for *CTE*, which was numbered as 474359, but fresh fee was not demanded and the hereinbefore referred 2 (two) demand drafts were accepted against the said second application. Accordingly, on 25.03.2021, the respondent no. 4 requested the respondent no. 3 to process the application. The respondent no.4 then submitted a representation dated 09.09.2021 to the Chief Minister, Assam, highlighting that the respondent nos. 2 and 3 had not considered their second application.

l. On 27.01.2022, the respondent no.2 had issued a letter to another applicant, thereby rejecting their application for granting approval to set up a new *CPC* unit on the ground that vide notification dated 17.02.2018, a complete ban on such units was imposed.

m. The respondent no.4 then approached this Court by filing a writ petition which was registered as W.P.(C) No. 3726/2022, to agitate its grievance as the respondent nos. 2 and 3 had not considered their application for *CTE*. This Court, while issuing notice vide order dated 06.06.2022, observed that the pendency of the writ petition would not be a bar to the respondent authorities to process the application.

n. Thereafter, on 13.12.2022, the 6th Core Technical Committee meeting of the respondent no.2 was convened to consider the case of the respondent no. 4 in view of the order dated 06.06.2022, passed in W.P. (C) No. 3726/2022. Accordingly, by an order dated 13.12.2022, the respondent nos. 2 and 3 had issued an extension of *CTE* for *Petroleum Coke Calcination Unit* with annual capacity of *Calcinated coke* of 12,000 MT in favour of the respondent no.4.

o. Thereafter, this PIL was filed and moved on 11.05.2023.

p. Accordingly, it was prayed that the PIL be dismissed.

5) The learned senior counsel for the respondent no. 4, has made his submissions against the PIL. It has been submitted as follows:-

a. The learned senior counsel for the respondent no.4 had questioned the *locus standi* of the petitioner to maintain the present PIL, because its head office is in Delhi. Moreover, it is projected that there are no materials on record to show that the petitioner had done any actual work in the State of Assam or anywhere in the North East India.

b. Moreover, it has been submitted that from the selective impleading of only the respondent no.4 by leaving out others, the purpose of this PIL is only to somehow thwart the industry of the respondent no.4 so as to eliminate them as prospective competitors of the existing industries in the field.

c. It has been submitted that the petitioner has suppressed material facts which has bearing in the case by not bringing on record the subsequent development after the notification dated 17.02.2018 was issued. In the said context, it was submitted that the petitioner had not disclosed regarding the notification dated 05.04.2019, which was brought on record by the respondent nos. 2 and 3 through their affidavit-in- opposition. Moreover, it was submitted that the respondent no. 4 had approached the respondent nos. 2 and 3 on 28.08.2019, while the notification dated 05.04.2019 was holding the field.

d. It has been submitted that the petitioner has not disclosed the source of getting the documents which have been annexed to the writ

petition. It has been submitted that several of the annexed document are available only in the record of the respondent no.2 and are not available in public domain. Moreover, it was submitted that none of the documents are either certified copies or copies obtained through RTI mode. Accordingly, it has been submitted that the PIL is hit by Rule 10(1)(c) of the Gauhati High Court (Public Interest Litigation) Rules, 2011 [hereinafter referred to as "GHC(PIL) Rules" for short]. Accordingly, it has been submitted that the said GHC (PIL) Rules mandates that the source of obtaining documents has to be disclosed.

e. It has also been submitted that the petitioner has failed to disclose that it is receiving funds from some petroleum product industry, including the companies which are involved in adversarial litigation with the respondent no.4. Thus, it has been submitted that the GHC (PIL) Rules have been violated by failure on part of the petitioner to disclose conflict of interest.

f. It has been submitted that the petitioner receives funds from Indian Oil Corporation Limited, which is listed as sponsors in its website. In the said regard, it has been submitted that the respondent no. 4 had filed a writ petition before this Court, which was registered as W.P.(C) No. 445/2022, which is pending for disposal, wherein the respondent no.4 had challenged the failure on part of the said corporation to issue "delivery orders" for "raw petroleum coke", in spite of having all the requisites. Thus, it is clear that the petitioner is having conflict of interest in the matter.

g. It has been submitted that the respondent no. 4 had been pursuing its application for *CTE* diligently, and in accordance with the relevant

Act and Rules. It was submitted that the application dated 28.08.2019, submitted by the respondent no.4 was not considered by the authorities of the respondent nos. 2 and 3, for which the petitioner had to file W.P.(C) No. 3726/2022. It was submitted that only after the order dated 06.06.2022, was passed by this Court in the said W.P.(C) No. 3726/2022, that the respondent no.2 and 3 had considered the application of the respondent no. 4 on 31.12.2022. Thus, it was submitted that it was an incorrect projection by the petitioners that the respondent no. 4 had not taken any steps after receiving *PCTE* in 2012.

h. It was submitted that the notification dated 17.02.2018, on which the petitioner has placed reliance was superseded by the notification dated 05.04.2019 and thereby, the restriction was only on use of domestic and imported pet coke as fuel, which is not used by the respondent no.4. It has been submitted that the respondent no. 4 uses *raw petroleum coke* only as a raw material and/or feedstock to produce *CPC*.

i. It has been submitted that by issuing another notification dated 13.02.2020, the respondent no.2 had cancelled the notification dated 05.04.2019. Hence, it was submitted that on 31.12.2022, when the *CTE* was issued, the notification dated 17.02.2018 did not hold the field.

j. Accordingly, it was prayed that the PIL be dismissed.

6) Perused the (a) writ petition, (b) affidavit by the petitioner, (c) affidavit-in-opposition by respondent no. 4, (d) additional affidavit by

respondent no.4, (e) affidavit-in-opposition by respondent nos. 2 and 3, (f) reply affidavit by the petitioner against the affidavit-in-opposition filed by respondent nos. 2 and 3, (g) reply affidavit by the petitioner against the affidavit-in-opposition filed by respondent no. 4, (h) additional affidavit by respondent no.4, (i) additional affidavit filed by respondent nos. 2 and 3, (j) additional affidavit filed by the respondent nos. 2 and 3, (k) reply affidavit filed by the petitioner against the affidavit filed by the respondent nos. 2 and 3. Also perused the enclosures to the hereinbefore referred affidavits. Also considered the submissions made at the Bar.

7) Thus, two points of determination arise for decision in this case:-

a. Whether the PIL is liable to be dismissed for non-disclosure of (i) source of documents annexed to the writ petition; and (ii) of conflict of interest?

b. Whether the impugned letter dated 31.12.2022, issued by the respondent nos. 2 and 3 warrants interference in this PIL?

8) *Point of determination no. a(i):*

a. On this issue, the learned senior counsel for the respondent no. 4 had referred to the relevant provision of Rule 10(1)(c) of the GHC (PIL) Rules. The said provision is quoted below:-

> *A specific averment, in para 2 of the writ petition, as to the source of knowledge of the facts alleged in the writ petition and the further inquiries/ investigation made to determine the veracity of the same.*

b. In paragraph 2 of this PIL, the petitioner has mentioned that the source of knowledge of facts stated in the writ petition is from the documents, reports available in the public domain, courts as well as

records maintained in the office of the respondent no.2.

c. The learned senior counsel for the respondent no.4 had submitted that several documents which are annexed to the writ petition were from the records of the office of the respondent nos. 2 and 3, which are not in public domain. Therefore, when the petitioner had pleaded in the instant PIL that the documents are from records maintained in the office of respondent no.2, it is sufficient compliance of the requirement of Rule 10(1)(c) of the GHC (PIL) Rules. In their respective affidavit-in- opposition, the respondent nos. 2 and 3 and respondent no.4 have not alleged that any of the document that has been annexed to the writ petition were forged, fake or non-existent. Therefore, it is not for this Court to make any inquiry to find out how the documents came into the hands of the petitioner. The respondents have responded to those documents, which makes those documents to be un-disputed.

d. Thus, as there has been a compliance of Rule 10(1)(c) of the GHC (PIL) Rules, 2017, the PIL would be maintainable. The point of determination no. a (i) is answered accordingly.

9) *Point of determination no. a(ii):*

a. It was submitted by the learned senior counsel for respondent no. 4 that the petitioner NGO gets funding from Indian Oil Corporation Ltd. for its activities and the said corporation is shown to be their sponsors in the website of the petitioner.

b. It has also been submitted that the respondent no.4 had to file a writ petition against the said corporation for enforcement of their right to

petcoke.

c. The said corporation is a Government of India undertaking and moreover, the said organisation is known to be funding various NGOs for a variety of social welfare programmes as a part of discharging their corporate social responsibility. It is not the case of the respondent no.4 that the same set of officers who deal with issuance of delivery order for petcoke are the very officers who deal with and/or take decisions for giving advertisement in the magazines of the petitioner or for funding some of their programmes. Therefore, the Court is unable to accept that the lack of statement that the petitioner has received sponsorship from Indian Oil Corporation Limited has vitiated this PIL in any manner whatsoever.

d. The point of determination no. a (ii) is answered accordingly.

10) *Point of determination no. 2:*

a. The case of the petitioner is that *CPC* is a "red" category industry and thus, is highly polluting industrial unit.

b. It has been admitted by the Pollution Control Board (respondent nos. 2 and 3) in their affidavit-in-opposition that vide notification no. WB/GUW/T-3521/17-18/22 dated 17.02.2018, it was decided not to allow any further expansion of the existing as well as new *CPC* and *LAMC* within the State of Assam. The said notification was issued pursuant to the Government of Assam letter no. MI.113/2012/256.

c. The Government of Assam, Environment and Forest Department, issued another notification bearing no. FRM.28/2018/46 dated 19.07.2018, thereby in exercise of power under Section 19 (3) of the

Air (prevention and Control of Pollution) Act, 1981, prohibited the use of Pet Coke in all industrial units within the district of Kamrup (M) in all its forms as a fuel for any purpose whatsoever, including its use as a fuel for the generation of power, steam or any other form of energy.

d. Thereafter, the Member Secretary, Pollution Control Board, Assam (respondent no.3), issued a notification no. WB/T-179/17-18/84/24 dated 05.04.2019, by which in superseding the earlier notification no.WB/GUW/T-3521/17-18/22 dated 17.02.2018, and in exercise of power under Section 19 (3) of the Air (Prevention and Control of Pollution) Act, 1981 and Sections 3 and 5 of the Environment (Protection) Act, 1986, it was ordered as follows: -

1. Usage of both domestic and imported pet coke as fuel in the State of Assam is banned forthwith.

2. Import of pet coke is banned for industries other than that uses it as feedstock in their manufacturing process (not as fuel). The following categories of industries are exempted from the provisions.

a) Cement industries;
b) Lime- Kiln;
c) Calcium Carbide; and
d) Gasification.

e. Thereafter, the respondent no.2, vide notification no. WB/T-179/17-18/245 dated 13.02.2020, cancelled the earlier notification no.WB/GUW/T-3521/17-18/22 dated 17.02.2018, with immediate effect.

f. Thus, the notification no. WB/T-179/17-18/84/24 dated 05.04.2019, referred above holds the field.

11) *Was the application of the respondent no. 4 for issuing fresh CPC unit could have been lawfully treated as an application valid to grant*

extension of CTE dated 10.12.2012:

a. The petitioner has alleged that the validity of the *PCTE*, dated 10.12.2012, issued in favour of the respondent no.4, had expired on 09.12.2012. The statement made in paragraph 12 of the writ petition (PIL) is vaguely denied by the respondent no.4 in its affidavit-in opposition, which amounts to admission. The respondent no.2 and 3, in their affidavit-in- opposition had admitted that the *CTE* was valid from 10.12.2012 to 09.12.2013. Moreover, the respondent nos. 2 and 3 had also admitted that the said industry of the respondent no.4 did not commence its operation within the stipulated period of 1 (one) year.

b. However, the respondent nos. 2 and 3 have taken a stand that the respondent no. 4 had made an application dated 12.03.2019, for extending the validity of the *CTE* dated 10.12.2012. Apparently, the said statement is *ex facie* false. In this regard, it would be appropriate to refer to Annexure-2 to the affidavit-in-opposition filed by respondent no. 4, which is a copy of the affidavit-in-opposition filed by the respondent no. 4 in connection with I.A.(C) No. 309/2022 [in W.P.(C) No. 445/2022 – *The Calciner's Association, Assam v. Indian Oil Corporation Ltd. & 4 others]*. Annexed to the said affidavit is a copy of the application dated 28.08.2019, issued by the respondent no. 4, by which the said respondent no. 4 had applied for (i) *CTE* under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1981; (ii) *CTE* under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981; and (iii) Authorisation under Rule 5 of the Hazardous Wastes (Management and Handling) Rules, 1989. The acknowledgement against the said Thus, by no stretch of imagination,

the application dated 28.08.2019, can be said to be an application for extending the validity of the *PCTE*.

c. Be it mentioned that the "consent" that was granted and/or issued on 10.12.2012 was not a *Consent to Establish (CTE* for short), but it was a *Provisional Consent to Establish (PCTE* for short). The Court was not shown any document from record of this writ petition that the *PCTE* granted to the respondent no. 4 was converted to *CTE*.

d. The learned standing counsel for the respondent nos. 2 and 3 and the learned senior counsel for the respondent no. 4 has not been able to cite any provision of any Act, Rules or notification empowering and/or authorizing the respondent nos. 2 and 3 to *suo motu* convert and/or treat an application for *CTE* into/as an application for extending the validity of a *PCTE* in 2019, the validity of which had expired on 09.10.2013, i.e. after a lapse of about 6 (six) years.

e. The respondent no. 4 has sought to project that its application dated 28.08.2019 was not acted upon. Thereafter, in the year 2021, the respondent no.4 was verbally informed that due to an alleged software glitch, the respondent no.2 had migrated to a new software and as advised, a fresh application was made in the on-line portal, containing same draft numbers which were submitted with application dated 28.08.2019. Thus, the respondent no. 4, in a way has admitted that the on-line portal of Government of Assam can be calibrated to accept pre-dated applications and also to generate undated acknowledgement without showing the date-stamp and time-stamp of the generation of acknowledgment. Moreover, it has also been admitted by the respondent no.4 that the Government portal can also generate "unique

application identity number PCB/CTE/KU/ 002034/08/2019, which indicates the year which had already past two years before. It can be understood that due to some technical glitch, there may be a few days/weeks of delay in generating a unique application identity number. But then, it would have been permissible to just mention in the acknowledgment the application receipt date, which is obviously missing in the present case in hand. Thus, the Court is constrained to form an opinion that the so called on-line portal of the Government of Assam, which is used by the Pollution Control Board, Assam, is quite capable of generating undated acknowledgement which is also capable of generating unique identification number of past years, which makes the portal totally unreliable and totally untrustworthy under the unique facts and circumstances of this case. This observation is strictly restricted to this case and the observations made in this case would not be applicable to any other application and thus, shall not prejudice any other application made during that time period.

f. The respondent no.4 has sought to project that the application fees of Rs.1,00,000/- (Rupees One lakh only), that was provided by the respondent no.4 was appropriated against on-line application.

g. It may be mentioned that though the writ petition, being W.P.(C) No. 3726/2022, has been annexed to the affidavit-in-opposition filed by respondent no.4, however, all annexures appended thereto are not filed along with the said affidavit-in-opposition filed on 14.06.2023. Similarly, all the documents referred to as annexures to the written objection filed by the respondent no. 4 are also not enclosed in the said affidavit-in-opposition filed by respondent no.4 on 14.06.2023.

Therefore, as documents are selectively filed, the said affidavit-in-opposition filed by the respondent no. 4, the said affidavit-in-opposition is not totally reliable.

h. The respondent no.4, in its additional affidavit had stated that the *CTE* dated 25.10.2006 for its *Electrode Carbon Paste* at E.P.I.P., Amingaon, Guwahati-781031, has been extended from time to time. The operation of the said plant is not the subject matter of this PIL, rather, the establishment and operation of only the *CPC* unit, which is a "red" category polluting industry, is the subject matter of this writ petition. However, in its affidavit-in-opposition filed on 14.06.2023, the respondent no. 4 had taken a stand in paragraph 17 thereof that the respondent no. 4 was a "calciner"; in the additional affidavit filed by the respondent no. 4, it has been stated to the effect that the process used by the respondent no. 4 is calcination; and it was further stated that the respondent no.4 was a calciner. Moreover, the respondent nos. 2 and 3, in its 6th Core Technical Committee Meeting held on 13.12.2022, had observed in its resolution that the unit of the respondent no. 4 was an existing unit. Thus, this leads to the question as to how the Pollution Control Board, Assam, allowed the existing unit of respondent no. 4 to operate a calcination plant without *CTE* and *CTO* (consent to operate). If there existed such a document, the same has been withheld from the Court. The reasons are too obvious because that could have been done unless the Pollution Control Board, Assam has turned a blind-eye to such operation, thereby allowing 'red' category industry to operate without a specific *CTE* and *CTO*.

i. Thus, from the minutes of the 6th Core Technical Committee Meeting held on 13.12.2022, the respondent nos. 2 and 3 appear to be a party to the tapestry of falsification of records, which is to treat an *Electrode Carbon Paste* industrial unit of the respondent no. 4 as an existing *Calcinated Petroleum Coke Industry*.

j. In paragraph 6(a) of the additional affidavit filed by the respondent nos. 2 and 3 on 04.04.2024, which was sworn by the Environmental Engineer and Nodal Officer (Legal) of the Pollution Control Board, Assam (respondent no.2), it has been specifically admitted to the effect that the original *CTE* issued on 10.12.2012 was valid from 10.12.2012 to 09.12.2013. It was also admitted that the private respondent did not commence operation within the stipulated period of 1 (one) year and neither did it apply for renewal of the *PCTE*. In subsequent paragraph nos. 6(b) to 6(i) of the said affidavit, after referring to the notifications and sequence of application for issuance of *CTE*, it was stated that in view of the order dated 06.06.2022, passed by this Court in W.P.(C) 3726/2022, the Board considered the matter in its 6th Core Technical Committee Meeting, examined the various notifications and position of law laid down by the Supreme Court of India, the Board was of the considered opinion that the unit of the respondent no. 4 was eligible for extension of validity of *CTE*.

k. As per the relevant part of the minutes of the 6th Core Technical Committee Meeting held on 13.12.2022, the following resolution was taken:-

1. *The unit is actually an existing unit.*

2. *The Industry needed extension of validity of their CTE instead of fresh CTE, if no changes have been made in the process.*

3. *The Industry shall not use the pet coke as fuel but as feed stock only.*

4. *The applicant shall have to the order of the Supreme Court of India in WP(C) No. 13029/1983.*

5. *The applicant shall have to submit legal undertaking stating clearly that they shall not use CPC as fuel and it shall only be used as feedstock.*

6. *The applicant shall have to withdraw the writ petition in order to enable the Board to take a decision in the light of the Apex Court order as well as the existing notification of the Govt. of Assam.*

The Committee is of the opinion that the prayer of the applicant may be considered in view of the existing order/ notification etc.

7. *If they have ever operated, the same may be considered for CTO subject to clearance of all arrear dues of CTO fee.*

12) Neither the respondent nos. 2 and 3, nor the respondent no.4 have brought any document on record to discharge their burden to show that in a plant authorised to set up and operate a *CPC* industry.

13) Rather, the Pollution Control Board, Assam, without referring to any *PCTE* or *CTE* for a *CPC* plant has merely stated in the resolution no. 7 of the 6th Core Technical Committee Meeting held on 13.12.2019, that "*If they have ever operated, the same may be considered for CTO subject to clearance of all arrear dues of CTO fee*." The same would mean that the apex body to control pollution in the State of Assam encourages "red" category industry to operate with Pollution Control Board having no record of *CTO* a *CPC* unit and awards such industries with reward of extending the *CTE* when there is no valid *CTO*.

14) Thus, the 6th Core Technical Committee meeting held on 13.12.2019, by taking a resolution to extend the validity of the *PCTE* after 6 years of its lapse, has acted beyond the mandate of the (i) Air (Prevention and Control of Pollution) Act, 1981; (ii) Water (Prevention and Control of Pollution)

Act, 1981; (iii) Environment (Protection) Act, 1986; and (iv) any rules applicable in the State of Assam under the three Acts referred hereinbefore. Such an action is contrary to greater public interest.

15) Therefore, the above point is decided by holding that though the application of the respondent no. 4 was valid, but the action of the respondent nos. 2 and 3 in extending the validity of *PCTE* beyond 09.12.2013 after a period of 6 years is bad in law and not sustainable under any of the provisions of the (i) Air (Prevention and Control of Pollution) Act, 1981; (ii) Water (Prevention and Control of Pollution) Act, 1981; (iii) Environment (Protection) Act, 1986; and (iv) any rules applicable in the State of Assam under the three Acts referred hereinbefore.

16) In light of the discussions made hereinbefore, the point no. 3 is decided by holding that the application of the respondent no. 4 for issuing fresh CPC unit could not have been lawfully and validly be treated as an application to grant extension of CTE dated 10.12.2012, after its validity has lapsed on 09.12.2013 and no Consent to Operate a Calcinated Petroleum Coke plant/ unit was obtained during its validity.

Locus standi of the petitioner:

17) The respondent nos. 2 and 3 and the respondent no.4 had questioned the locus standi of the petitioner on the ground that they have not done any activity in the State of Assam. However, the respondent nos. 2 and 3 and respondent no. 4 could not demonstrate that there is any law which bars a writ Court to entertain a PIL by a public spirited organisation who have no foot-print in the State, when it has raised an issue of public importance such as establishment of a highly polluting industry by not adhering to the Acts, Rules

and Notifications by which the Pollution Control Board, Assam (respondent no.2) should be guided. The sponsoring of few programme of the petitioner by the Indian Oil Corporation cannot be decided in the absence of the said organization as a party to this PIL.

18) The Court is disinclined to grant prayer (B) because the parties who might be adversely affected if prayer (B) is granted, are not arrayed as respondents. The prayer (C) cannot be allowed for the reason that the orders of the Court cannot be made subject to any further enquiry.

19) Therefore, in light of the discussions above, this PIL succeeds. The following reliefs are granted:-

a. The order no. WB/GUW/T-2276/12-13/138/2443 dated 31.12.2022, issued by the Member Secretary, Pollution Control Board, Assam (respondent no.3), by which the Consent to Establish vide letter no. WB/GUW/T-2276/12-13/57/984 dated 10.12.2012, was extended, thereby permitting *Calcined Petroleum Coke* Unit at Export Promotion Industrial Park, Amingaon, is hereby set aside and quashed.

b. The Environment and Forest Department and the Pollution Control Board, Assam, shall do all that may be required to see that all consequential actions to follow so as to ensure the consequences attached to the setting aside and quashing of the order/letter dated 31.12.2022, is made effective.

c. The Pollution Control Board, Assam (respondent no.2) is directed to pay a cost of Rs.1,00,000/- (Rupees One lakh only), which shall be deposited with the Women and Child Development Department so as to create facilities for specially-abled girl child in such care homes (like

Mon Ashaneer at Guwahati) at remote districts, which do not have all the desired facilities.

d. It would be permissible for the State, if so advised, to recover the said cost from officials who are found responsible in turning a blind eye on the point that the *Provisional Consent to Establish (PCTE for short)* was never granted to the respondent no. 4 to establish *Calcined Petroleum Coke* Unit and even if it was granted, the same was not followed by *Consent to Operate (CTO for short)*, and that such *PCTE* had lapsed on 09.12.2013, which could not have been lawfully extended.

e. This order shall come into effect on expiry of 30 (thirty) days from the date of the judgment and order, i.e. with effect from 10.12.2026.

20) This writ petition/ PIL is allowed to the extent as indicated above.

JUDGE **JUDGE**

Champak Rajbongshi Digitally signed by Champak Rajbongshi Date: 2026.11.11 16:52:13 +05'30'

Comparing Assistant **Private Secretary**