

**IN THE HON'BLE SUPREME COURT OF INDIA
INHERENT JURISDICTION
CONTEMPT PETITION (CIVIL) NO. OF 2020
IN
CIVIL APPEAL NO. 1359 OF 2017**

IN THE MATTER OF:

1. Amitabh Srivastava

...Petitioner

VERSUS

1. Rajendra Kumar Tiwari
Chief Secretary
State of Uttar Pradesh
101, Lok Bhawan, U.P. Civil Secretariat,
Vidhan Sabha Marg Lucknow – 226001

...Alleged Contemnor No. 1

2. Nilam Sawhney
Chief Secretary
State of Andhra Pradesh
1st Block, 1st Floor,
Interim Government Complex,
A.P Secretariat Office,
Velagapudi – 522503

...Alleged Contemnor No. 2

3. Naresh Kumar
Chief Secretary
State of Arunachal
Pradesh, Civil Secretariat
Itanagar – 791111

...Alleged Contemnor No. 3

4. Kumar Sanjay Krishna
Chief Secretary
State of Assam
Block- C, 3rd Floor, Assam
Sachivalaya, Dispur
Guwahati -781006

...Alleged Contemnor No. 4

5. Deepak Kumar
Government of
Government of Bihar
Main Secretariat, Patna – 800015 ...Alleged Contemnor No. 5
6. RP Mandal
Chief Secretary
State of Chhattisgarh
Mahanadi Bhawan, Mantralaya Naya
Raipur – 492002 ...Alleged Contemnor No. 6
7. Parimal Rai
Chief Secretary
State of Goa
Goa Secretariat, Porvrom,
Bardez, Goa – 403521 ...Alleged Contemnor No. 7
8. Anil Mukim
Chief Secretary
State of Gujarat
1st Block, 5th Floor, Sachivalaya,
Gandhinagar – 382010 ...Alleged Contemnor No. 8
9. Keshni Anand Arora
Chief Secretary
State of Haryana
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Chandigarh- 160019 ...Alleged Contemnor No. 9
10. Anil Kumar Khachi
Chief Secretary
State of Himachal Pradesh
H P Secretariat, Shimla – 171002 ...Alleged Contemnor No. 10
11. Sukhdev Singh
Chief Secretary
State of Jharkhand
1st Floor, Project Building, Dhurwa,
Ranchi- 834004 ...Alleged Contemnor No. 11
12. T.M Vijay Bhaskar
Chief Secretary
State of Karnataka

- Room No. 320, 3rd Floor Vidhana Soudha,
Bengaluru – 560001 ...Alleged Contemnor No. 12
13. Vishwas Mehta
Chief Secretary
State of Kerala
Kerala Secretariat,
Thiruvananthapuram – 695001 ...Alleged Contemnor No. 13
14. Iqbal Singh Bains
Chief Secretary
State of Madhya Pradesh
MP Mantralaya, Vallabh Bhavan,
Bhopal – 462004 ...Alleged Contemnor No. 14
15. Sanjay Kumar,
Chief Secretary
State of Maharashtra
Mantralaya, Madam Cama Road,
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Mumbai – 400032 ...Alleged Contemnor No. 15
16. Rajesh Kumar
Chief Secretary
State of Manipur
South Block, Old
Secretariat Imphal -795001 ...Alleged Contemnor No. 16
17. Lalnunmawia Chuaungo
Chief Secretary
State of Mizoram
New Secretariat Complex,
Aizawl – 796001 ...Alleged Contemnor No. 17
18. M.S. Rao
Chief Secretary
State of Meghalaya
Main Secretariat Building Rilang
Building, Room No. 321
Meghalaya Secretariat, Shillong – 793001 ...Alleged Contemnor No. 18
19. Temjen Toy
Chief Secretary

- State of Nagaland
Civil Secretariat,
Kohima- 797004 ...Alleged Contemnor No. 19
20. Asit Kumar Tripathy
Chief Secretary
State of Odisha
General Administration
Department Odisha Secretariat
Bhubaneswar – 751001 ...Alleged Contemnor No. 20
21. Vini Mahajan
Chief Secretary
State of Punjab
6th Floor, Punjab Civil Secretariat - 1,
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22. Rajeeva Swaroop
Chief Secretary
State of Rajasthan
C Scheme, Ashok Nagar,
Jaipur – 302007 ...Alleged Contemnor No. 22
23. S.C. Gupta
Chief Secretary
State of Sikkim
New Secretariat,
Gangtok – 737101 ...Alleged Contemnor No. 23
24. K. Shanmugam
Chief Secretary
State of Tamil Nadu
Secretariat, Chennai – 600009 ...Alleged Contemnor No. 24
25. Somesh Kumar
Chief Secretary
State of Telangana
Burgula Rama Krishna Rao
Bhavan. 9th floor, Adarsh
Nagar -5000063 ...Alleged Contemnor No. 25
26. Manoj Kumar
Chief Secretary
State of Tripura

New Secretariat Complex Secretariat
Agartala -799010, West Tripura

...Alleged Contemnor No. 26

27. Om Prakash

Chief Secretary
State of Uttarakhand
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Secretariat, Fourth, 4, Subhash Rd,
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...Alleged Contemnor No. 27

28. Rajiva Sinha

Chief Secretary
State of West Bengal
Bengal Nabanna Bhavan,
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Mandirtala Shibpur, Howrah – 711102

...Alleged Contemnor No. 28

**PETITION ON BEHALF OF THE PETITIONER ABOVE NAMED
UNDER SECTION 12 OF THE CONTEMPT OF COURTS ACT, 1971
READ WITH RULE 3 (C) OF THE RULES TO REGULATE
PROCEEDINGS FOR CONTEMPT OF THE SUPREME COURT,
1975 FOR INITIATING CONTEMPT PROCEEDINGS AGAINST
THE ABOVE-NAMED ALLEGED CONTEMNORS FOR WILFUL
DISOBEDIENCE & NON-COMPLIANCE OF JUDGMENT DATED
22.09.2017 PASSED BY THIS HON'BLE COURT IN CIVIL APPEAL
NO. 1359/2017**

To,

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION JUDGES
OF THE SUPREME COURT OF INDIA
AT NEW DELHI,

THE HUMBLE PETITION OF THE
ABOVE-NAMED PETITIONER:

MOST RESPECTFULLY SHOWETH:

1. That the instant contempt petition has been preferred by the Petitioner
herein praying for compliance in letter and spirit of the operative part
in judgment dated 22.09.2017 passed by this Hon'ble Court in Civil

Appeal No. 1359/2017 whereby this Hon'ble Court was pleased to direct the Executive in all the States to frame appropriate guidelines or recruitment rules for the State Pollution Control Board [hereinafter referred to as 'SPCBs'] within a stipulated period of six months, while further granting liberty to public spirited persons to institute writ(s) of quo warranto against persons appointed in the SPCBs as either Chairman or members, bereft of statutory or constitutional requisites. The relevant extract of the judgment dated 22.09.2017 is reproduced hereunder:

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

True Copy of the judgment dated 22.09.2017 passed by this Hon'ble Court in Civil Appeal No. 1359/2017 is marked and annexed as **ANNEXURE P/1 Pg. 21 to 54.**

2. That at the outset, it is pertinent to mention that the Petitioner herein is an Advocate practicing at the Bar in Lucknow, who embarked upon instituting the instant petition in capacity of a 'public spirited person'. It is further undertaken and expressed on behalf of the Petitioner that, in a career spanning over 30 years, the Petitioner has neither approached the Hon'ble Courts by the way of a writ petition in the form of Public Interest Litigation nor been a part of any litigation for/against functionaries of any SPCBs. *Per contra*, a meticulous perusal of the judgment dated 22.09.2017 passed by this Hon'ble Court in the above-captioned Civil Appeal, shook the conscience of the Petitioner as 'public spirited person', and hence the Petitioner instituted the present contempt petition while in the backdrop of directive principles of the state enshrined under Articles 48A and 51A of the Constitution of India.
3. That furthermore, the Petitioner with the intent to strengthen subservience to the powers of this Hon'ble Court under Article 142 of the Constitution of India, prior to approaching this Hon'ble Court,

the Petitioner, in a public-spirited endeavour addressed a notice dated 17.09.2020 to the Chief Secretaries of all the States in respect of the wilful and deliberate non-compliance of the judgment dated 22.09.2017 by the States, despite a time-bound directory order by this Hon'ble Court qua framing of guidelines for appointment to SPCBs. True Copy of the notice dated 17.09.2020 addressed by the Petitioner to the Chief Secretaries of all States is marked and annexed as **ANNEXURE P/2 Pg. 55 to 68.**

4. That in the background of the case at hand, it may be noted that the National Green Tribunal [hereinafter referred to as 'NGT'], Principal Bench in the matter of '*Rajendra Singh Bhandari v. State of Uttarakhand*' vide judgment and order dated 24.08.2016 directed the State Governments to reconsider the appointments and further laying down guidelines for the appointment of SPCBs. Thereafter, the judgment and order dated 24.08.2016 came to be impugned before this Hon'ble Court in Civil Appeal No. 1359/2017; whereby the three fold issues pertained to : a) jurisdiction of NGT in issuance of guidelines for appointment, and orders directing reappointment qua SPCBs; b) ambit and applicability of Sections 2(m), 14 and 15 of the NGT Act, 2020 c) the necessity of making appointments in light of institutional requirements.

5. That with regard to the jurisdiction extent of NGT and ambit & applicability of Sections 2(m), 14 and 15 of the NGT Act, 2010; this Hon'ble Court held that the NGT was not bestowed with the jurisdictional competence to pass an order directing for removal of SPCBs appointees and for directing the States to formulate guidelines. However, this Hon'ble Court laid emphasis on the necessity of professionally competent persons seated in the chair of governance for strengthening of the institutions concerned.
6. That this Hon'ble Court while passing judgment dated 22.09.2017 arising out of Civil Appeal No. 1359 of 2017, further emphasised on the obligation of every citizen of the country to protection and preserve the environment, while reiterating the principles of sustainable development, public trust and intergenerational equity in the backdrop of repeated onslaughts against the environment. Furthermore, this Hon'ble Court contextually interpreted the directive principles of the state imbibed in the Constitution of India under Articles 48A [Protection and Improvement of Environment and Safeguarding Forests and Wildlife] and 51A(g) [It shall be the fundamental duty of every citizen of India to protect and improve the natural environment

including forests, lakes, rivers and wildlife, and to have compassion for living creatures].

7. That furthermore, this Hon'ble Court while rendering the judgment dated 22.09.2017 placed reliance on the communications on record addressed by the Ministry of Environment and Forest (MoEF) dated 26.09.1997 and conference held in Coimbatore dated 29th to 30th January, 2001; placing significance of induction of academicians, professionals, experts and technologists for the effective functioning of SPCBs and the need for key functionaries of the Board to possess requisite professional knowledge and experience for providing effective leadership.
8. That, *per contra*, in the judgment of this Hon'ble Court dated 22.09.2017, an astonishing incident from the judgment dated 15.02.2002 passed by the Hon'ble High Court of Jharkhand in ***Binay Kumar Sinha v. State of Jharkhand., 2002 SCC Online Jhar 111*** was referred wherein one matriculation passed political worker belonging to a political party, was appointed as Chairman of State Pollution Control Board, by the State Government, admittedly possessing no knowledge of any aspect of pollution or environmental laws to begin with.

9. That consequently, this Hon'ble Court while rendering the judgment in the above-captioned civil appeal held that the principle of good governance while establishing viable institutions shall comprise of professionally competent persons and this parameter is applicable not only to administrative but statutory bodies alike, including the SPCBs, since statutory bodies are the creation of law made by competent legislature. Reliance and emphasis was further placed on the recommendations of the *Bhattacharya Committee (1984)*, *Belliappa Committee (1990)*, *Menon Committee (2005)* in restructuring the SPCBs with the exuberance of scientific and technologist temper. This Hon'ble Court further remarked that any contrary view or compromise in the appointments would render the exercise undertaken by all these committees completely irrelevant and redundant. Relevant extract of the recommendations by the aforementioned Committees as cited in the judgment dated 22.09.2017 is reproduced hereunder:

28. Additionally, various committees have given sufficient guidelines for the appointment of the Chairperson and members of the SPCBs. The Bhattacharya Committee (1984) proposed that the structural organisation of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development. The Committee, inter alia, called for (a) discouraging the flow of deputationists to the Boards, (b)

upgrading regional laboratories, (c) providing each Board with at least one mobile laboratory, (d) creating a Centralised training institute, (e) providing, on priority, funds to establish air control activity, and (f) bestowing the power to make posts at least up to the rank of environmental engineers/scientists with the Boards.

29. *Similarly, the Belliappa Committee (1990) recommended (a) introducing elaborate monitoring, reporting and organisational systems at the national level along with four regional centres and one training cell in each Board, (b) effecting suitable changes in the Board's recruitment policy to enable them induct persons with suitable academic qualifications, and (c) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.*

31. *Finally, the Menon Committee made recommendations that are a part of the communication of 16-8-2005 referred to above. It was also recommended that (a) in general, State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff, (b) the statutory independence and functional autonomy given to the SPCBs should be protected and the Boards should be kept free from political interference. The Boards should be enabled to make independent decisions in this regard, and (c) the Chairperson of the SPCB should be a full-time appointee for a period of five years and the Member-Secretary of the SPCB should also be appointed for a period of five years.*

10. That consequently, this Hon'ble Court directed all States to formulate guidelines, within a stipulated period of 6 months, for the appointment of SPCBs in consonance with the institutional requirements of the SPCBs and in light of the recommendations of the Committees [*Bhattarcharya Committee (1984)*, *Belliappa Committee (1990)*, *Menon Committee(2005)*]. Furthermore, this Hon'ble Court granted liberty to the public-spirited persons to approach the High Court in a writ of quo-warranto, challenging the SPCB appointment of any person, who failed to meet the institutional qualifications.
11. That it is the humble submission of the Petitioner that despite of this Hon'ble Court laying stern emphasis on the necessity for placing a benchmark in the appointment of SPCBs in conformity with the statute, recruitment rules, guidelines formulated by various committees as well as the Supreme Court Monitoring Committee constituted by the Apex Court, statutory norms as provided under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as well as under Environmental Laws. However, despite the passage of over 2 years, the Respondent States/Alleged Contemnors have failed to comply with the same and therefore in contempt of the directions of this Hon'ble Court.

12. That similarly, this Hon'ble Court in the aforesaid judgement dated 22.09.2017 dealing with the recruitment of professional experts has also observed that in respect of the post of Member-Secretary under the statutory provisions of the Water Act, 1974, places statutory requirement qua full-time appointee, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control having regard to the fact that the State Pollution Control Boards/Pollution Control Committee in Union Territories have been assigned an important role for prevention and control of pollution from different sources. In recent years, additional responsibilities have been assigned to them for enforcement of various statutes. Hence, these organisations need to be suitably strengthened to effectively perform with regard to challenges at hand. Moreover, the Supreme Court Monitoring Committee in furtherance of implementing the order of Apex Court in this regard had found that in several States, persons from IFS or from the PWD especially from the PHE departments, are either being appointed or deputed to the post of Member-Secretary without the necessary statutory qualifications not in conformity with the provisions of Environmental Laws as has also been propounded by

this Hon'ble Court in the aforesaid judgment sought to be implemented in conformity with the observations mentioned therein.

13. That from a bare perusal of operative portion of the aforesaid judgment dated 22.09.2017 apart from other judgments, quoted therein whereby it is crystal clear that the respondents are persistently committing contempt of Supreme Court, intentionally, wilfully and deliberately apart from the fact that the petitioner sent a written communication annexing therewith the copy of judgment through registered post on 17.09.2020 for implementing the time bound direction of this Hon'ble Court but in vain and as such the respondents are liable for initiation of contempt proceeding Under Article 129 of the Constitution of India.

14. That it is further relevant to point out here that despite issuance of written communication through requested post which is a sort of reminder to all the respondents who are bound to comply with the directions of Apex Court as mentioned above in letter and spirit before invoking the jurisdiction of Supreme Court under Article 129 of the Constitution of India. Moreover, this Hon'ble Court while interpreting the phraseology of Article 129 of the Constitution of India, (1991) 4 SCC 406 held that Article 129 declares the Supreme

Court as court of records and it further provides that Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression “including the power to punish for contempt of itself”. The article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression “including”. The expression “including” has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that Supreme Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record.

15. That this Hon’ble Court while rendering the judgment in *Anil Ratan Sarkar and Ors. v. Hiral Ghosh and Ors.* (2002 (4) SCC 21) , held that the Contempt of Courts Act has been introduced in the statute-book for securing confidence of people in the administration of justice. If an order passed by a competent Court is clear and unambiguous and

not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence. It was observed that power to punish a person for contempt is undoubtedly a powerful weapon in the hands of Judiciary but that by itself operates as a string of caution and cannot be used unless the Court is satisfied beyond doubt that the person has deliberately and intentionally violated the order of the Court. The power under the Act must be exercised with utmost care and caution and sparingly in the larger interest of the society and for proper administration of justice delivery system. Mere disobedience of an order is not enough to hold a person guilty of civil contempt. The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.

- 16.** That furthermore, it is also humbly submitted by the Petitioner herein, that the present contempt petition is not devoid of locus, even though, admittedly so, the Petitioner was not a party before the NGT or this Hon'ble Court in the above-captioned civil appeal. The same has been reaffirmed by this Hon'ble Court in the case of ***Girish Mittal v. Parvati***

V. Sundaram & Anr., Contempt Petition (C) 412/2016 in Transfer Case (C) No. 96/2015 held that a contempt petition is maintainable even if filed on behest of a person who was not a party to the judgment, in light of directions issued by the Courts being general in nature and any violation of such directions would enable an aggrieved person to file a contempt petition.

17. That in light of the above factual and legal matrix emerging in the instant case, it is humbly submitted by the Petitioner that the Alleged Contemnors/ Respondents have intentionally and wilfully flouted the time bound directions of this Hon'ble Court, while wholly disregarding the importance of the Environment and the laws emanating from the Constitution to safeguard and protect it. Therefore, the contempt at behest of the alleged contemnors is a continuing cause of action, thereby empowering this Hon'ble Court to take notice of the same.

18. MAIN PRAYER:

In the circumstances it is, therefore, most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. Initiate contempt proceedings against the respondents/alleged contemnors above named under Section 12 of the Contempt of Courts Act, 1971 read with Rule 3 (c) of the Rules to Regulate Proceedings

for Contempt of the Supreme Court, 1975, for wilful disobedience & non-compliance of judgment 22.09.2017 passed by this Hon'ble Court in Civil Appeal No. 1359/2017;

- b. Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

Drawn By:
Ashima Mandla, Adv.

FUZAIL AHMAD AYYUBI
Advocate for Petitioners

Drawn On: 30.10.2020
Filed On: 05.11.2020
New Delhi