

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

Principal Bench, New Delhi

Original Application No. 868/2019

&

Execution Application No. 05 of 2022

Shamsher Singh

Vs.

Applicant

State of Haryana

Respondent

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1.7.22

(G. Thirumurthy)  
Scientist 'E'

Central Pollution Control Board,  
Parivesh Bhawan, East Arjun Nagar,  
Delhi-110032.

Place: Delhi

Date: 28.06.2022

**CENTRAL POLLUTION CONTROL BOARD  
Delhi-110032**

**COMPLIANCE STATUS W.R.T. CONSTITUTION OF APPELLATE AUTHORITY  
IN THE MATTER OF HON'BLE NGT O.A. NO. 868 / 2019 IN STATE POLLUTION  
CONTROL BOARDS / POLLUTION CONTROL COMMITTEES (SPCBS/PCCS)**

**1.0 Background**

The Hon'ble Supreme Court of India in Andhra Pradesh Pollution Control Board (APPCB) Vs Prof. M.V. Nayudu (Retd.) & Others (1999) 2 SCC 718 made a judgement that "...the Government of India should, in our opinion, bring about appropriate amendments in the environmental statutes, Rules and notification to ensure that in all environmental Courts, Tribunals and appellate authorities there is always a Judge of the rank of a High Court Judge or a Supreme Court Judge, - sitting or retired - and Scientist or group of Scientists of high ranking and experience so as to help a proper and fair adjudication of disputes relating to environment and pollution. There is an immediate need that in all the States and Union Territories, the Appellate Authorities under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 or other rules, there is always a Judge of the High Court, sitting or retired, and a Scientist or a group of Scientists of high ranking and experience, to help in the adjudication of disputes relating to the environment and pollution. An amendment to the existing notifications under these Acts can be made for the present. ...".

In related to above, in the matter of O.A No. 868/2019, Shamsheer Singh Vs. State of Haryana before National Green Tribunal (NGT), Principal Bench, New Delhi, the Hon'ble NGT directed vide order dated April 06, 2021 that "...CPCB may review constitution of Appellate Authorities under Section 28 and 31 of the Water and Air Act in all the States / UTs in accordance with the Hon'ble Supreme Court Direction of this Tribunal in this matter". The copy of this order be forwarded to the Chief Secretaries of all States / UTs and CPCB.

In compliance to the Hon'ble NGT order, Central Pollution Control Board (CPCB) communicated the above order to SPCBs/PCCs with a request to submit the information regarding constitution of the Appellate Authority by the in respective State/ UT in accordance with the Hon'ble Supreme Court Direction vide CPCB letter no. PCP/AA/2021-22/ dated June 08<sup>th</sup>, 2021. In continuation to above, reminder letters were also issued on June 22, 2021 and August 18,2021.

In continuation to above, the Hon'ble NGT further ordered in O.A. 868 /2019 dated 23.02.2022 that *“CPCB to ascertain compliance status on the subject from all States / UTs and place the same on record by e-mail to be filed with the Registrar General of the Tribunal, within three months. In case found necessary, the same be placed before the bench for further directions”*.

## **2.0 Status of Compliance of Hon'ble NGT order**

In compliance to the above orders, CPCB further requested SPCBs / PCCs on March 02, 2022 and April 13, 2022 to submit the compliance status w.r.t Constitution of Appellate Authorities under Sections 28 and 31 of the Water Act and Air Act in all States / UTs in accordance with the Hon'ble Supreme Court direction, conveying direction of Hon'ble NGT order.

Accordingly, the compliance status of constitution of Appellate Authority by SPCBs/ PCCs as per order is that, out of **36 States / UTs**, only **05 States /UT** (Puducherry, Tamil Nadu, Telangana, Odisha & West Bengal) have complied to the order, **21 States/UTs** (Andaman & Nicobar, Arunachal Pradesh, Chandigarh, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Tripura, Uttarakhand & Uttar Pradesh) have constituted Appellate Authority, but not as per the order, needs to be re-constituted and the remaining **10 States / UTs** (Andhra Pradesh, Assam, Bihar, Daman, Diu & Dadra Nagar Haveli, J & K, Lakshadweep, Ladakh, Maharashtra, Manipur & Sikkim) have to constitute Appellate Authority. The compliance status of constitution of Appellate Authority by SPCBs/PCCs is given as **Annexure 1**.

# Annexure-I

## Compliance Status w.r.t Constitution of Appellate Authorities by States / UTs

S. No.	State /UTs	Appellate Authority details	Notification / Letter Date	Status of Compliance
1	Andaman & Nicobar	Appointed Chief Secretary, A&N Administration as Appellate Authority	Notification 22.11.2016	Authority is not constituted as per Supreme Court order. <i>Need to be re-constituted complying to order.</i>
2	Andhra Pradesh	-	-	APPCB requested the Secretary, EFS&T Department vide letter dated 11.07.2021 for re-constitution as per Supreme Court order, <b>yet to be constituted.</b>
3	Arunachal Pradesh	Chairman: Development Commissioner (Finance) Members: 1. Chief Engineer, PHED 2. Joint Secretary (Law)	Notification 2.1.2018	Authority is not constituted as per Supreme Court order. <i>Need to be re-constituted complying to order</i>
4	Assam	-	-	Member Secretary, Assam SPCB has requested Addl. Chief Secretary of Assam for constitution of Appellate Authority vide letter dated 20.06.2022, <b>yet to be constituted</b>
5	Bihar	-	-	Member Secretary, Bihar SPCB has requested Chief Secretary, Govt. of Bihar for constitution of Appellate

				Authority vide letter dated 09.03.2022, <b>yet to be constituted.</b>
6	Chandigarh	Appointed a single person as Appellate Authority i.e.  1. Adviser to the Administrator – To hear the appeal under Water Act 2. Joint Secretary, MoEF&CC – To hear the appeal under Air Act	Letter 22.06.2021	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order</i></b>
7	Chhattisgarh	Appointed a single person as Appellate Authority i.e. Smt. Sangeeta P., Special Secretary, Department of Housing and Environment, Government of Chhattisgarh	Notification 31.07.2019	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order</i></b>
8	Daman, Diu & Dadra Nagar Haveli	-	-	<b>Yet to be constituted.</b>
9	Delhi	Appointed a Single person as Appellate Authority i.e. Financial Commissioner, Delhi Administration, Delhi	Notification 18.02.1992	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order.</i></b>
10	Goa	Appellate Authority consisting of the President of the Administrative Tribunal, Goa	Notification 29.09.1997	Only President of the Administrative Tribunals is appointed and no technical member (s) appointed to help in the adjudication of disputes relating to the environment and pollution. <b><i>Need to be re-constituted complying to order.</i></b>
11	Gujarat	Chairman: Secretary / Principal Secretary / Additional Chief Secretary, Forest & Environment Department  Members:  1. Additional Secretary / Joint	Notification 08.12.2015	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order</i></b>

		Secretary / Deputy Secretary, Forest & Environment Department 2. Dr. Mayuri H. Pandya (Professor)Head, L.A. Shah College, Ahmedabad		
12	Haryana	Appointed Additional Chief Secretary, Govt. of Haryana as Appellate Authority	Notification 31.12.2019	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order.</i></b>
13	Himachal Pradesh	Appointed Principal Secretary, (Pollution Control) to the Govt. of Himachal Pradesh as Appellate Authority	Notification 24.11.2004	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order.</i></b>
14	Jharkhand	Appointed Member of Revenue Council as single person	Notification 01.08.2018	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order.</i></b>
15	Jammu & Kashmir	-	-	<b>Yet to be constituted.</b>
16	Karnataka	Chairman: Dr. Sandeep Davey, IAS, Additional Chief Secretary to the Govt. of Karnataka, Forest, Ecology and Environment Department  Member:  1. Shri. Ravindra Pail T 2. Vacant	Order 4.8.2018  Order 23.10.2017	Member Secretary, KSPCB requested Secretary, Forests, Ecology & Environment, Govt. of Karnataka to appoint member for Appellate Authority vide letter dated 4.09.2020. <b><i>Need to be reconstituted complying to order.</i></b>
17	Kerala	Chairman: The Law Secretary, Law Department  Members: 1. Director, Directorate of Environment and Climate Change  2. Head, Environment Engineering Department, Govt. College of	Notification 17.12.2016 & 20.12.2016	Authority is not constituted as per Supreme Court order. <b><i>Need to be re-constituted complying to order.</i></b>

		Engineering, Thiruvananthapuram		
18	Ladakh	-	-	<b>Yet to be constituted.</b>
19	Lakshadweep	-	-	<b>Yet to be constituted.</b>
20	Madhya Pradesh	Single person Appellate Authority i.e. Deputy Secretary, Department of Housing and Environment, Government of Madhya Pradesh	Notification 24.09.2005	Authority is not constituted as per Supreme Court order. <i>Need to be re-constituted complying to order</i>
21	Maharashtra	-	-	<b>Yet to be constituted.</b>
22	Manipur	-	-	<b>Yet to be constituted.</b>
23	Meghalaya	Chairman: Either Sitting or Retired Judge Members: 1. Serving or Retired Chief Engineer 2. Serving or Retired Director of Health Services	Notification 01.08.2018	As per the Notification, Chairman and Members are yet to be nominated. <i>Need to be re-constituted complying to order.</i>
24	Mizoram	Chairman: Chief Secretary Members: 1. Secretary, Law & Judicial Department 2. Secretary, Environment, Forest & Climate Change	Notification 29.09.2017	Authority is not constituted as per Supreme Court order. <i>Need to be re-constituted complying to order</i>
25	Nagaland	Appellate Authority consist of a single person or three people as the State Govt. may think fit. Accordingly, the following two retired Judges serve the purpose:  1. Hon'ble Justice H. K Sema – Former Supreme Court Judge 2. Hon'ble Justice Zelre Angami – Former High Court Judge	Letter 21.04.2022 by SPCB	Only two Retired Judges are appointed and no technical member (s) appointed to help in the adjudication of disputes relating to the environment and pollution. <i>Need to be re-constituted complying to order.</i>
26	Odisha	Chairman: Justice C.R. Das-Sitting Justice of Orissa High Court	Notification 19.11.2019	<b>Complied.</b>

		<p>Members – Under Air Act</p> <ol style="list-style-type: none"> <li>1. Dr. Pratap K.J. Mohapatra-retired Prof. Department of Industrial Engineering &amp; Management, IIT, Kharagpur</li> <li>2. Dr. Debendra kumar Rout- Ex. Senior Environmental Scientist, SPCB, Odisha</li> </ol> <p>Members – Under Water Act</p> <ol style="list-style-type: none"> <li>1. Shri. Prafulla Kumar, Tripathy, Retired Director of Handicrafts &amp; Cottage Industries, Ex- Member Secretary, SPCB</li> <li>2. Dr. Baman Chandra Acharya, Retired Prof. Botany, Khalikote Autonomous College, Berhampur</li> </ol>		
27	Puducherry	<p>Chairman: Hon'ble Hon'ble Justice Mr. G. Rajasuria (Retd.) High Court, Madras</p> <p>Members:</p> <ol style="list-style-type: none"> <li>1. Dr. G. Chandrasekhar, Head of the Department of chemical Engineering, Pondicherry Engineering College, Puducherry</li> <li>2. Dr. Priya Davidar, Head of Department of Centre for Ecology and Environment, Puducherry University, Puducherry</li> </ol>	Notification 17.10.2016	<b>Complied.</b>
28	Punjab	Appointed a Single person as Appellate Authority i.e. Chief Secretary	-	Authority is not constituted as per Supreme Court order. <i>Need to be re-constituted complying to order.</i>
29	Rajasthan	<p>Chairman: Chairman, Revenue Board (Ajmer)</p> <p>Members:</p> <ol style="list-style-type: none"> <li>1. Chief Secretary (Law), Department of Law &amp; Legal Affairs</li> <li>2. Sh. B.S Sharma, Retired Chief Engineer, Public Health</li> </ol>	Notification 19.08.2010	Chairman is not headed by Judge. <i>Need to be re-constituted complying to order.</i>

		Engineering Department		
30	Sikkim	-	-	Member Secretary, Sikkim SPCB has requested Chief Secretary, Govt. of Sikkim for constitution of Appellate Authority vide letter dated 11.06.2021, yet to be constituted.
31	Tamil Nadu	Chairman: Hon'ble Justice K.B.K.Vasuki, Retired Judge of Madras High Court Members:  1. Thiru Jayakumar T.C. Ethiraju, Addl. Chief Engineer (Retired), TNPCB 2. Dr. Jayaraman, Former Under Secretary, TNPCB.	Notification 20.02.2019 & 04.04.2020	<b>Complied.</b>
32	Telangana	Chairman: Hon'ble Justice Sri B. Prakash Rao, Former Judge Members:  1. Prof. (Retd). V. Prabhakar Reddy, Osmania University 2. Dr. Jayatheertha Rao, (Retd). Scientist, Indian Institute of Chemical Technology, Hyderabad	Notification 3.8.2021	<b>Complied</b>
33	Tripura	Chairman: Dr. D. K. Sharma, IFS, Additional PCCF, Forests Department Govt. of Tripura Members:  1. Principal- Agartala Govt, Medical College. 2. Principal- Tripura Institute of Technology, Agartala	Notification 05.09.2018	Appellate Authority is not constituted as per the Supreme Court order. <b><i>Need to be re-constituted complying to order.</i></b>
34	Uttarakhand	Chairman: Principal Secretary/ Secretary, Department of Justice, Govt. of Uttarakhand Members:  3. Additional Secretary, Department	Notification 05.12.2014	Appellate Authority is not constituted as per the Supreme Court order. <b><i>Need to be re-constituted</i></b>

		of Environment & Forest, Govt. of Uttarakhand 4. Additional Chief Conservator of Forests/ Chief Conservator of Forests, Environment		<i>complying to order.</i>
35	Uttar Pradesh	Appointed a Single person as Appellate Authority i.e. Special Secretary, Environment Department	Notification 14.01.2013	Authority is not constituted as per Supreme Court order. <i>Need to be re-constituted complying to order.</i>
36	West Bengal	Chairman: Hon'ble Justice Md. Mumtaz Khan, Retired Justice, Calcutta High Court Members:  1. Prof. Sekhar Bhattacharjee, guest faculty, Chemical Engg. Department, Jadavpur university and Ex, Professor University of Calcutta 2. Prof. Pratap Bandyopadhyay , Ex-Associate Professor , Civil Engineering Department, I,I,E,S,T, Sibpur	Letter 14.07.2021	<b>Complied.</b>

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 868/2019

(With report dated 15.12.2020)

Shamsher Singh

Applicant

Versus

State of Haryana

Respondent(s)

Date of hearing: 06.04.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent: Mr. Anil Grover, Senior AAG with Mr. Rahul Khurana, Advocate  
for State of Haryana

**ORDER**

1. A report was sought from the Haryana State PCB with reference to the allegation of pollution caused by rubber factory in the process of burning of tyres at Village Ikkas District Jind, Haryana by Krishan son of Nafe Singh son of Pannu Ram and others resulting in huge pollution and damage to the public health and the environment.

2. The matter was last considered on 15.06.2020 in the light of report of the State PCB dated 18.02.2020 to the effect that inspite of violation of environmental norms and closure, since the Appellate Authority granted stay, the environmental norms could not be enforced. The Tribunal noticed that the Appellate Authority was not validly constituted in accordance with the binding directions of the Hon'ble Supreme Court in *APPCB vs. Prof. M.V. Nayudu (Retd.) & Ors. (1999) 2 SCC 718*. It was

necessary that the State of Haryana takes necessary remedial action.

Operative part of the order is as follows:

*“2. Accordingly, an action taken report dated 18.02.2020 has been filed by the State PCB to the effect that on verification, allegations of pollution were found correct and order of closure was passed, apart from recommending prosecution and assessment of environment compensation. However, the said order was stayed on 04.03.2020 by the Appellate Authority under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.*

*3. We also find that the Appellate Authority is not headed by a former judge of the High Court as required in terms of judgment of the Hon’ble Supreme Court in APPCB vs. Prof. M.V. Nayudu (Retd.) & Ors. (1999) 2 SCC 718. Reference may be made to the relevant observations therein as follows:*

*“41. Different statutes in our country relating to the environment provide appeals to appellate authorities. But most of them still fall short of a combination of judicial and scientific needs. For example, the qualifications of the persons to be appointed as appellate authorities under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, Section 31 of the Air (Prevention and Control of Pollution) Act, 1981, under Rule 12 of the Hazardous Wastes (Management and Handling) Rules, 1989 are not clearly spelled out. While the appellate authority under Section 28 in Andhra Pradesh as per the notification of the Andhra Pradesh Government is a retired High Court Judge and there is nobody on his panel to help him in technical matters, the same authority as per the notification in Delhi is the Financial Commissioner (see notification dated 18-2-1992) resulting in there being in NCT, neither a regular judicial member nor a technical one.*

*42. ... .. of paramount importance in the establishment of environmental courts, authorities and tribunals is the need for providing adequate judicial and scientific inputs rather than leave complicated disputes regarding environmental pollution to officers drawn only from the executive.*

*xxx.....xxx.....xxx*

**48. There is also an immediate need that in all the States and Union Territories, the appellate authorities under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 or other rules, there is always a Judge of the High Court, sitting or retired, and a scientist or group of scientists of high ranking and experience, to help in the adjudication of disputes relating to the environment and pollution. An**

**amendment to existing notifications under these Acts can be made for the present.**

xxx.....xxx.....xxx

**50. We request the Central and State Governments to take notice of these recommendations and take appropriate action urgently.”**

4. *The State of Haryana may take remedial action accordingly so that the Appellate Authority is manned as per directions of the Hon’ble Supreme Court. We also find that once pollution was being caused, there is no occasion for the Appellate Authority manned by Secretary to the Govt. to stay remedial action at the cost of violation of law and public health. The State PCB should have pointed out facts or challenge the order by way of further appeal. Absence thereof may give rise to collusion at some level.*

5. *Let the Chief Secretary Haryana look into the matter and take remedial action to uphold the rule of law and file a compliance report before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) (preferably in the form of searchable/OCR PDF and not image PDF).”*

3. Accordingly, action taken report has been filed by the State PCB on 15.12.2020 to the effect that remedial action has been taken by way of closing the unit, assessing environmental compensation and initiating prosecution. On the subject of constitution of Appellate Authority, an action taken report has been filed by the Secretary, Environment Department, Haryana on 22.02.2021 to the effect that since only five cases are pending, the Appellate Authority headed by a retired High Court judge has not been found viable.

4. We find the stand of the State of Haryana to be unacceptable. The directions of the Hon’ble Supreme Court are categorical and have already been reproduced above. If the number of cases is inadequate, the work assigned to a former judge of the High Court as Chairman of the Appellate Authority can be part time and remuneration can be based on the number of sittings but violation of judgment of the Hon’ble Supreme Court cannot be justified on that ground. Accordingly, the State of

Haryana may take further remedial action in the matter within three months. CPCB may review constitution of Appellate Authorities under Sections 28 and 31 of the Water Act and Air Act in all States/UTs in accordance with Hon'ble Supreme Court direction, conveying direction of this Tribunal in this matter.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretaries of all States/UTs and CPCB by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

April 6, 2021  
Original Application No. 868/2019  
DV

Item No. 01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Execution Application No. 05/2022  
IN  
Original Application No. 868/2019  
(M.A. No. 15/2022)

Shamsher Singh

Applicant

Versus

State of Haryana

Respondent

Varun, Ganesh Nagar,  
Tilak Nagar, Delhi

Applicant in E.A.

Date of hearing: 23.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Ms. Mansi Chahal, Advocate for Applicant in E.A 05/2022

**ORDER**

1. This application seeks enforcement of order of the Hon'ble Supreme Court in *APPCB vs. Prof. M.V. Nayudu (Retd.) & Ors. (1999) 2 SCC 718* requiring the Appellate Authorities under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 to be manned by former High Court Judges. Following the said Judgment, this Tribunal also vide order dated 06.04.2021 in O.A. No. 868/2019, *Shamsher Singh vs. State of Haryana*

directed the State of Haryana to take remedial action on the issue of manning of the Appellate Authority. This Application has been filed with a grievance that inspite of order of this Tribunal, the State of Haryana has not taken the necessary remedial action.

2. In view of Judgment of the Hon'ble Supreme Court, there can be no two views that the State of Haryana has to comply with the said order. Needless to say, this order will be without prejudice to the remedy of any aggrieved party under the contempt law, at appropriate forum.

3. We also direct CPCB to ascertain compliance status on the subject from all States/UTs and place the same on record by e-mail to be filed with the Registrar General of the Tribunal, within three months. In case found necessary, the same be placed before the Bench for further directions.

The Execution application is disposed of subject to the above.

A copy of this order be forwarded to the Chief Secretaries of all States/UTs and CPCB by email for compliance.

Adarsh Kumar Goel, CP

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Dr. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

February 23, 2022  
Execution Application No. 05/2022  
In Original Application No. 868/2019  
(M.A. No. 15/2022)  
SN