

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

I.A. NO. OF 2020

IN

**ORIGINAL APPLICATION NO. 164 OF 2018
(EARLIER O.A. NO. 276 OF 2013)**

IN THE MATTER OF:

Ashwani Kumar DubeyOriginal Applicant/Applicant

Versus

Union of India & Ors. ...Respondents

AND IN THE MATTER OF:

1. M/s Lanco Anpara Power Ltd.
Gate No. 03, Anpara,
P.O. Anpara- 231225
District- Sonebhadra,
Uttar Pradesh
Through its CEO/MD
...Non-Applicant No.1/Respondent No.25
2. Anpara Thermal Power Station
(Unit of U.P. Rajya Vidyut Utpadan Nigam Ltd., UPRVUNL)
P.O. Anpara – 231225
District- Sonebhadra
Uttar Pradesh
Through its CGM/Director
...Non-Applicant No.2/Respondent No.19
3. Vindhyachal Super Thermal Power Station
Through its Executive Director,
NTPC Vindhyanagar- 486885,
Waidhan Road, District- Singrauli
Madhya Pradesh
Through its Executive Director
...Non-Applicant No.3/Respondent No.10

**APPLICATION UNDER SECTION 18 OF THE NATIONAL GREEN
TRIBUNAL ACT, 2010 FOR APPROPRIATE DIRECTIONS**

MOST RESPECTFULLY SHOWETH: -

1. That the Applicant herein is the Original Applicant in the present matter and has filed the aforementioned Original Application

before this Hon'ble Tribunal. The contents of the same may kindly be read as part and parcel of the present application which are not being reproduced herein to avoid repetition.

2. That the Core Committee has submitted its report after inspection of the environmental situation of the Singrauli area pursuant to the order of this Hon'ble Tribunal dated 25.08.2014. Thereafter, this Hon'ble Tribunal vide order dated 28.08.2018 constituted the Oversight Committee headed by Hon'ble Mr. Justice Rajes Kumar for the effective implementation of the orders of this Hon'ble Tribunal. As per the report, the Rihand Reservoir (Govind Vallabh Pant Sagar), the only source of drinking water of the area is highly contaminated and the fly ash, bottom ash, toxic residue and other industrial waste are continuously flowing in the reservoir and the industries despite the orders/directions, have not taken any remedial measures to stop the same. The relevant portion of the recommendation regarding the Rihand Reservoir filed before this Hon'ble Tribunal on 20.08.2015 is reproduced herein below for the kind perusal of this Hon'ble Tribunal: -

"5.5 Flyash and bottom ash of Anpara (A&B) Thermal Power Plant of Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (UPRVUNL) and Anpara C Thermal Power Plant of M/s Lanco are disposed off in ash dyke located in Belvadah village situated on the bank of Rihand Reservoir. The over flow from the ash pond, after settling, is discharged into the reservoir. The discharge of the over flow from ash pond is proposed to be stopped, once the ash water recirculation systems (AWRS) at both the plants are

commissioned. AWRS at Anpara C has been constructed, while it is under advanced stage of completion at A&B plants of UPRVUNL. The commissioning of the AWRS and the stoppage of effluent into Rihand Reservoir have to be continuously monitored by the power plants and UPPCB.

5.9 The Committee observed that huge area (more than 3000 acres) along with Rihand Reservoir has been occupied for disposal of fly ash by thermal power plants of NTPC Ltd., UPRVUNL), M/s Lanco Power and M/s Hindalco Industries Ltd. (U.P.) in the Singrauli region. Most of the ash ponds have attained their maximum height and reached their saturation, and therefore, have no further augmentation capacity for disposal of ash slurry. The situation will be worse in the next five years, unless proper measures are taken to augment and accelerate the utilization of fly ash as per the notification of 2009. The disposal of ash in the ash ponds along the Rihand Reservoir leads to silting of the reservoir, in case of non-compliance of ash ponds overflow discharge limit or any breach in ash dyke of the ash pond/s. Concerned industries are required to follow the existing guidelines and cap the ponds. Phyto-restoration of such sites should be carried out with immediate effect."

That it is respectfully submitted that despite the aforesaid observations the industries /non-applicants herein did not take any action and still the fly ash, bottom ash, toxic residue, industrial sewage is continuously flowing into the reservoir due to which the capacity of the reservoir has been reduced and therefore de-silting, restoration of the reservoir is necessary in

a time bound manner. Respectfully submitted that approximately more than 20 Lacs people are dependent on the Rihand Reservoir for water for drinking and other purposes.

A true copy of the affidavit dated 20.08.2015 submitted by Core Committee through the Director of Central Pollution Control Board is annexed herewith as **ANNEXURE A-1 at (Pages to)**.

3. That it is respectfully submitted that in the evening of 06.10.2019, flyash dyke of Vindhyachal Super Thermal Power Station/ Non-Applicant No.3 breached due to the negligence of Non-Applicant No.3/Management, resultantly, huge quantity of flyash, bottom ash, toxic water and industrial/solid waste entered in the Rihand Reservoir and agricultural fields, water bodies, wells and houses of the people residing in the nearby areas. The aforesaid huge quantity of flyash, toxic water, bottom ash and other pollutants are still continuously entering in the Rihand Reservoir and destroying the reservoir. It is submitted that the heavy flow of ash damaged the crops standing in the fields of poor farmers.

It is further respectfully submitted that the said incident did not happen first time in the history of that area, but it is a continuous tragedy which happens every year and earlier happened more than twice in each year due to the negligence of the industries situated there. Likewise, the ash dyke of other power industries was breached in the year 2016, 2017 and 2018 and that time also it had made bad impact upon the environment, crops of poor farmers, their cattle, flora-fauna

and water bodies. It is further submitted that continuous discharge of Flyash, Bottom Ash, Toxic Water and Industrial Solid Waste, which were intentionally and wilfully discharged by Thermal Power Plants situated in the Singrauli area has completely destroyed the Rihand Reservoir and water bodies with high pollutants and contamination. The industries are not adhering to any environmental norms despite that they have legal duties and liabilities towards the residents of the Singrauli area. It is respectfully submitted that the industries are not taking any precautionary measures to stop the pollution and are merely working for their greed & profit, which is affecting the life of common man and upcoming generation. The health, life and limb of children and the residents of nearby villages are at stake. The newly born, young children are also affected with unknown and serious ailments /illness, diseases. The children are born with defects in their body parts. Many people have serious ailments/ diseases and also have problems in their breathing and in other body functioning. The pendrive and photographs of the flyash dyke breach, affected people, children affected with unknown and serious ailments /illness, diseases due to the aforesaid illegal wilful discharge of solid waste are annexed herewith as **ANNEXURE A-2 at (Pages to)**.

4. That it is respectfully bring in the kind notice of this Hon'ble Tribunal that the Applicant had filed a Writ Petition (Civil) No. 1303/2019 before Hon'ble Supreme Court of India against the Non-Applicant No.3 for the incident of ash dyke breach dated

06.10.2019. It is respectfully submitted that Hon'ble Supreme Court vide order dated 18.12.2019 permitted the Applicant to withdraw the said Writ Petition (Civil) No. 1303/2019 and granted liberty to raise the issued before this Hon'ble Tribunal. A true copy of the order dated 18.12.2019 passed by Hon'ble Supreme Court in Writ Petition (Civil) No. 1303/2019 is annexed herewith as **ANNEXURE A-3 at (Pages to)**.

5. That it is respectfully submitted that the Oversight Committee headed by Hon'ble Mr. Justice Rajes Kumar visited the area and have submitted the report before this Hon'ble Tribunal. As per the said report, it is clear that the Respondents/Non-Applicants despite various reminders and opportunities have not taken any action to stop the flowing of flyash, bottom ash, toxic water, toxic residue, industrial sewage and chemicals in the Rihand Reservoir. The relevant portion of the report of the Oversight Committee is reproduced herein below for the kind perusal of this Hon'ble Tribunal: -

"NTPC Vindhyachal/Non-Applicant No.3

The committee has visited on the information being received that there is a breach of fly ash dyke on 06.10.2019, the committee visited this spot on 16.12.2019. The committee found a huge breach of dyke No. V1. On the spot inspection it was found that huge quantity of fly ash have been drained from the Dyke, polluting water of Rihand Reservoir. We found that still sufficient quantity of water along with ash is going on to the Rihand Reservoir. Shri Sen submitted that the restoration of the ash dyke V1 will take at least 8 months and may be completed by August, 2020. He further submitted that as far as the stability of the dyke is

concerned, they have obtained stability report from IIT, Roorkee wherein they have approved the stability of all Dykes of NTPC- Vindhyachal. Further, the cause of the breach is under assessment and according to Mr. Sen, it may likely be assessed by December, 2019 by IIT, Roorkee. Mr. Sen has admitted that it is true that when the dyke was breached, a huge quantity of water along with fly ash had been drained out of the Dyke. At the time of breach whatever quantity of water along with fly ash was drained from the dyke was spread out on NTPC land including overflow lagoon of AWRS pump house. Subsequent breaching of one portion of OFL also resulted in some fly ash flowing into the reservoir alongwith water. Mr. Sen submitted that the plant will take up the dredging of the affected area of Rihand Reservoir to remove the ash that has flown into the Reservoir.

On being asked about the real status, the Regional Officer of MPPCB, Mr. Balmiki, Singrauli who made the spot inspection on the next day of breach, stated that due to the breach of V1 dyke of NTPC Vindhyachal a huge quantity of water along with ash was drained and spread on NTPC land including the overflow lagoon of AWRS pump house, and had flown to Rihand Reservoir after the breach of OFL. He stated that huge quantity of ashes had gone to Rihand Reservoir polluting the water of the Reservoir.

Prima facie, the committee is of the view that huge quantity of fly ash travelled to Rihand Reservoir following the dyke breach. However, the assessment of exact quantity of fly ash travelled to Rihand Reservoir requires expert assessment. It is to be made by the competent authority including MPPCB. It will be open to the plant to get the assessment from their expert. Shri H.K. Sharma, Director MPPCB states that on the information being received about the breach of ash dyke, the authorities of MPPCB visited the site along with authority of CPPCB on

dated 9th and 10th October, 2019 and they have prepared the report wherein they have also made a tentative assessment of ash slurry discharged. He further submitted that on the basis of the report, a sum of Rs.10.00 Crore have been demanded from the plant towards the interim environmental compensation, out of which a sum of Rs.1.00 Crore bank guarantee has been submitted.

On a query Mr. Sen submitted that they are raising height of the dyke. On further query being made whether they have sought any permission from the MPPCB and submitted the drawing, he submitted that no permission has been sought. The committee is of the view that before raising the height of the dyke, as it has direct connection/ impact over the sustainability of the ash dyke, the proposed design requires approval by the SPPCB and the permission from SPPCB is mandatory in this regard. It is shocking to know that the Regional Officer of SPPCB visited in the area, although aware that the work is going on to increase the height of the ash dyke, no action has been taken by them against the plant; This shows the non-sincerity of the officers and they have to be more careful in future.

On the spot inspection, the Committee found that a large portion of Ash Dyke had been breached with the result huge quantity of flyash had spread all over the land. It has travelled up to the Rihand Reservoir. Prima facie, the interim environmental compensation demanded by the MPPCB at Rs.10.00 Crore cannot be said to be excessive. The said amount ought to be deposited. We are of the view that the furnishing of bank guarantee of Rs.1.00 Crore is not sufficient. MPPCB may issue the notice asking the Plant to deposit the entire Rs.10.00 Crore. Bank guarantee cannot be said to be deposit, it can only be treated as security.

The committee is of the view that to strengthen the ash dyke the plant should consider to develop RCC wall around the fly ash dyke. The structure should be of RCC having a layer of PVC, tiles to ensure the stability of the dyke. At present the dyke is being made out of the fly ash putting boulder pitching outside wall and brick lining inside the dyke. The storage of fly ash is very important aspect in the context of Environment. Improper storage of fly ash results in air pollution and water pollution affecting the Environment. In the last meeting we have asked the thermal power plants to explore the possibility of developing the fly ash mound as has been developed by NTPC Dadri. Neither any interest has been shown in this regard nor any step has been taken to develop the fly ash mound. In the face of status stated above, we direct NTPC-Vindhyachal to be very sincere and implement the directions given by the committee and by the Hon'ble NGT in a shorter time.

UPRVUNL, Anpara

On the information being received from the various sector that there is a continuous flow of the water carrying fly ash from two sides towards Rihand Reservoir since last more than one year. On 15.12.2019 night at about 6:30 PM committee visited the spot and found that the information given is true. There is continuous flow of water coming from plant along with the fly ash filling in Rihand Reservoir. On a query being made that why this is happening. Shri Pradhul Gupta, Senior Engineer states that this flow is not continuous, it is mainly during the rainy season and this happened because of fulfilment of the ash dyke therefore the water is overflowing. It also carried catchment water. It is stated that they are raising the height of the dyke which may likely to take one year at least. He further submitted that they are also developing another compartment which may likely to take

six months and they are also making effort to divert the nala which carries natural water to reduce the quantity of water.

We do not find explanation satisfactory. The fact is that the water carrying fly ash are continuously flowing towards the Rihand Reservoir, the volume of the flowing water is very high and it carried fly ash, it is continuous since last more than one year. Discharge of fly ash to the Rihand Reservoir pollutes the water of reservoir which is the only source of water of the area. We find that the information about the flow of huge water along with fly ash had not been conveyed to SPCB authorities and they have deliberately concealed the facts. It is mentioned here that these two areas are in a very interior and we have to reach these places after travelling about 18 KM kaccha road through forest. Act of pollution amounts to violation of various laws and polluter is liable to be punished. The committee is of the view that since the flow of water along with fly ash is continuous, and there is no possibility for its immediate stoppage. The only way to stop the flow is to close operation of the unit and their unit is liable to be closed until they make arrangements and ensure that no water with ashes may go to the Rihand Reservoir. The committee is also of the view that they are liable for the environment compensation as well as cost of desilting of the ashes from the reservoir on the principle of polluter pay. The UPPCB is directed to assess environmental compensation and take all stringent actions under the provisions provided in the various acts.

Lanco

The LANCO stated that they have taken ash dyke on lease from the UPVUN and paying an amount of Rs.7.2 Crore per annum. The representative, Shri Sandeep Goswami, E.D. stated that for the fault of UPVUN they may not be punished and they may be allowed to continue

the production. We have heard the submission. There is a common ash dyke of UPVUN and LANCO.

LANCO is flowing its ashes and water generated in their plant in the ash dyke of UPVUN. If LANCO will be allowed to continue production and allowed to flow water with fly ash, problem will not be solved, as their water and fly ash will continue to drain in the Rihand Reservoir because they have no separate fly ash dyke. Therefore, we propose to shut down the plant for the time being. However, if they are aggrieved with the action of UPVUN, it will be upon for them to take necessary action under civil and criminal law against UPVUN. Their production shall be dependent on the production of UPVUN and whenever their production shall be allowed LANCO production shall also be allowed unless LANCO may make any other arrangement."

6. That the Non-Applicants herein have not stopped their operations and are generating Ash, Toxic Water, Industrial Waste and throwing the same in the Rihand Reservoir. Hence, causing panic to the people residing in the area. Drinking water is highly contaminated due to which people of the Singrauli area are suffering with several diseases.
7. That it is respectfully submitted that despite the specific directions of this Hon'ble Tribunal, the Non-Applicants did not take any preventive measures and it has become a routine for the industries which is causing serious damage to the environment, local people, cattle, fields, existing crops and water bodies. It is further submitted that the Flyash, Bottom Ash, Industrial/Solid Waste, Toxic Water is continuously flowing in the Rihand Reservoir. The Applicant belongs to Singrauli,

Madhya Pradesh and has concern with the issues as his relatives, family, local poor villagers, children and cattle are affected. Due to the negligence of Respondents/Non-Applicants, huge damage has been caused to the environment, water bodies, flora-fauna and the toxic waste, ash mixed with the water is spreading in other villages and destroying the water, crops, soil etc. The entire land has become infertile, therefore, kind indulgence of this Hon'ble Tribunal is required to pass a necessary order/ direction in this regard.

8. That it is respectfully submitted that despite the aforesaid serious problems, the State Pollution Control Boards and local administration have not taken any action to prevent the flowing of ash and toxic residues etc. in the reservoir and other water bodies. It is respectfully submitted that till the time the industries stop throwing the flyash, bottom ash, toxic residue, waste in the reservoir and other water bodies, they should be directed to shut down and be directed to stop their operations.
9. That the continuous monitoring of the directions are required and therefore Oversight Committee may kindly be directed to implement all the orders passed by this Hon'ble Tribunal and be further directed to take stringent action against the polluting industries. The industries should be imposed heavy costs and the reservoir and other water bodies of the area be restored and the cost may be recovered from the polluting industries on the doctrine of "*Polluter Pays Principle*". In the meantime, the industries should be directed to stop their operations as

suggested in the report submitted by the Oversight Committee appointed by this Hon'ble Tribunal.

10. That the present application is bonafide and is being filed in the interest of justice.

PRAYER

In view of the aforesaid, it is therefore, most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to: -

- (a) direct the Oversight Committee constituted by this Hon'ble Tribunal vide order dated 28.08.2018, to ensure the effective implementation of orders passed by this Hon'ble Tribunal from time to time and the Oversight Committee may be directed to take all necessary actions to restore the environment of the area as well as may kindly be directed to regularly monitor the improvements in accordance with the directions issued by this Hon'ble Tribunal from time to time.
- (b) Non-Applicant polluting industries may kindly be directed to stop the flow of fly ash, bottom ash, toxic residue and other industrial sewage in the Rihand Reservoir and other water bodies of the area and the polluting industries may be directed to close their operations, till they make permanent arrangements to stop the flowing of fly ash, toxic residue, bottom ash, industrial sewage etc. in the Rihand Reservoir and other water bodies.
- (c) direct the Government of Madhya Pradesh and Uttar Pradesh to take necessary and immediate steps regarding the safeguard of the residents of Singrauli and Sonebhadra districts and to

provide safe drinking water to the people residing nearby who are affected by the discharge of fly ash, bottom ash, toxic residue, industrial waste etc.

- (d) polluting industries/Respondents may be kindly be imposed heavy environmental compensation and cost of de-silting of the ashes from the reservoir and the cost may be recovered from the polluting industries on the principle of "*Polluter Pays Principle*".
- (e) Pollution Control Board may be directed to initiate criminal prosecution as per law against the responsible persons of the Non-Applicants Industries for causing the pollution
- (f) pass such other order(s) or direction(s), as this Hon'ble Tribunal deem fit and proper in facts and circumstances of the case; and, allow the cost.

Filed by:

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Drawn on: 09.01.2020

Filed on: .01.2020