

Item Nos. 03

Court No. 1

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

(By Video Conferencing)

Original Application No. 164/2018
(Earlier O.A.No.276/2013)

(With report dated 28.02.2020)

Ashwani Kumar Dubey

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 14.07.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Pankaj Sharma, Advocate

Respondent(s): Mr. K.M Nataraj, ASG with Mr. Sailesh Madiyal, Advocate
for R-10
Mr. Sanjay Jain, ASG with Mr. Nikhil Kandpal, Advocate
for R-19
Mr. Rajat Jariwal, Advocate for R-17
Mr. Raj Kumar, Advocate for CPCB
Mr. Daleep Dhyani, Advocate for UPPCB

ORDER

1. The order is being passed in continuation of order dated 05.11.2019. The issue for consideration is remedial action against pollution and violation of environmental norms by Thermal Power Stations operating in Singrauli and Sonebhadra Districts of Madhya Pradesh and Uttar Pradesh respectively, resulting inter-alia in air pollution, water contamination and large scale of damage to public health. The areas figure in the list of polluted industrial clusters based

on comprehensive environment pollution index, prepared by the CPCB as per available data of pollution

2. After considering the report of the joint Committee, constituted by the Tribunal, to the effect that damage to environment was being caused by the thermal power stations in Singrauli and Sonebhadra in M.P/U.P and that water bodies, including the Rihand Reservoir (main source of supply of drinking water in the area) were adversely affected, the Tribunal directed remedial action and also constituted an oversight committee (OC) headed by Justice, Rajesh Kumar, former Judge of the Allahabad High Court.

3. The Committee gave its reports about the status of compliance upon which the Tribunal passed further orders. The reports considered by this Tribunal include reports dated 14.12.2018 (Ist report), 28.06.2019 (IInd report), 21.08.2019 & 23.08.2019 (IIIrd report) and 29.10.2019 (IVth Report). The IVth report pointed out **damage to the Rihand Reservoir on account of breach of fly ash dykes of Essar Power and NTPC on 07.08.2019 and 06.10.2019 respectively**. Slurry travelled upto the reservoir giving rise to emergent situation. The concerned plants were required to take suitable remedial measures by the Committee.

4. In the earlier orders, the Tribunal directed consideration of recommendations of the Committee and appropriate further action, adopting appropriate safeguards. The Tribunal also directed the CPCB to have an action plan prepared by the power plants for de-silting of the reservoir and improvement of the dykes. The issue of recovery of compensation was deferred to the extent that there was stay by the Hon'ble Supreme Court. The term of Committee headed by Justice

Rajesh Kumar was initially for six months but was extended till 31.12.2019. The NTPC and Essar power were directed to initiate steps for restoration of their respective ash dykes by 31.12.2019.

5. In pursuance of the above, we have considered the matter further in the light of following:-

- I) Report of Justice Rajesh Kumar dated 20.12.2019
- II) Report of the CPCB dated 28.02.2020
- III) Objections to the report by the Vindhyachal Super Thermal Power Station, R-10
- IV) Comments to the observations of the OC report dated 20.12.2019 by the UPVUN.

6. Report dated 20.12.2019 by the OC is based on the minutes of meeting held on 17.12.2019 which record the status report furnished by the concerned power plants. With regard to the NTPC, the Committee observed that on account of the breach of its ash dyke, the fly ash travelled up to the reservoir for which interim compensation of Rs. 10 Crore was liable to be deposited. NTPC was also required to take remedial measures. UPUVN was also found to be liable as follows:

“ On the spot inspection, the Committee found that a large portion of Ash Dyke had been breached with the result huge quantity of fly ash 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 the 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 mount 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 mount. 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.

Committee directs the MPPCB to assess the Environment Compensation finally within one month. Plant is also directed to give the status report time to time, preferably within 15 days each time.

UPVUN, 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 carries 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 carries 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 provision provided in the various Acts.”

7. Report of the CPCB is on the issue of de-silting and restoration of Rihand Reservoir. It refers to pre-existing guidelines of CPCB on **ash disposal in mounds and backfilling of ash in abandoned mines**. With regard to the cost apportionment for de-silting/restoration of Rihand Reservoir, The CPCB has concluded as follows:

*“In absence of verified records in these respects, an assessment of contribution of each plant by this approach is difficult. Therefore, **the contribution of each power plant might also be revealed by the proposed study to assess sediment volume at various places in the reservoir.***

*To begin with, the total ash slurry volume generated by each plant on the periphery of Rihand reservoir can be considered as the basis of sharing of the cost of the study to assess sediment volume at various places in the reservoir. For this purpose, the information on annual power generation and coal consumption, average ash content, and annual ash generation as well as annual ash slurry generation based on ash to water ration power plants and collated (Annexure-III). **Total ash quantity and ash slurry volume generated over the years by individual thermal power plants located on the periphery of Rihand reservoir on the basis of information collected is presented below:***

Table 1

Thermal Power Plant	Capacity (MW)	Total ash disposed in Ash Pond till 31.03.2019 (MMT)	Total ash slurry disposed in Ash Pond till 31.03.2019 (MMT)	Relative share in total Ash of plants (multiple of least)	Relative share in total Ash Slurry of plants (multiple of least)	Share in total Ash of plants (% of total)	Share in total Ash Slurry of plants (% of total)
Anpara TPS UPRVUNL	2630	81.313	569.225	31.7	66.3	22.9%	19.6%
Lanco Anpara	1200	10.870	46.395	4.2	5.4	3.0%	1.6%
Renusagar, Hindalco	820	2.564	8.584	1	1	0.7%	0.3%
Singrauli NTPC	2000	89.295	803.654	34.8	93.6	25.1%	27.6%
Vindhyachal	4760	104.937	953.855	40.9	111.1	29.6%	32.8%

NTPC							
Rihand NTPC	3000	66.136	529.008	25.8	61.6	18.6%	18.2%
Total combined	12610	355.115	2910.801	138.4	339	100%	100%

It is submitted that U.P. Irrigation Department may be directed to coordinate the study to assess sediment volume at various places in the reservoir.

It is further submitted that Anpara TPS and Lanco-Anpara power plants may be directed to stop ash pond overflow discharge into Rihand reservoir.”

8. According to the Vidhyachal Super Thermal Power Station, R-10, the observation of the oversight Committee are completely erroneous and unsubstantiated. Breach was plugged within 30 hours. PFL wall was repaired and it is also incorrect that fly ash transfer to the Reservoir and that the raising of the height was without expert opinion. It is further submitted that compensation of Rs. 10 Crores was not justified. Cash payment of Rs. 1 Crore has been made towards interim compensation. With regard to developing fly ash mound, it is stated that it is not necessary. Comments of the UPVUN are that necessary action has been taken which may be verified. There is zero discharge from the ash dyke. Reference has also been made to the inspection report by the joint Committee of the CPCB and the State PCB recommending as follows:

“Recommendations

1. *M/s NTPC Shaktinagar to repair the AWRS desloped pipeline within 07 days & to stop discharge of decant water of S1 & S2 dyke immediately by pumping in M/s NTPC Vindh Nagar AWRS 03 system immediately.*
2. ***M/s NTPC Vindh Nagar shall collect back the spread over ash from 53 Ha area with minimal fugitive emission & dispose it in operating dyke. Unit shall submit the time bound action plan in this regard.***
3. ***M/s NTPC Vindh Nagar to stop the probable mixing of slurry in Rihand reservoir & Surya drain near decanting pond with no further delay.***

4. *M/s NTPC Vindhnagar may be asked to deposit 01 Crore to CPCB or MPPCB towards an interim environmental compensation w.r.t Aryavart Foundation v. M/s Vapi Green Enviro Ltd & Ors. Hon'ble NGT O.A 95/2018 order dated 11.1.2019"*

9. We have duly considered the stand of the NTPC- Vidhyachal Super Thermal Power Station as well as the UPUVN. Mere self-serving denial in the face of report based on site visit by a Committee appointed by this Court headed by a former judge of the High Court has no legs to stand. Responsible organisations should refrain from adopting such attitude. We uphold the report of the OC. We also note that the Tribunal has been considering the issue of compliance of Notification dated 31.12.2018 issued by the MoEF&CC requiring 100% utilization of fly ash vide order dated 12.02.2020 in *Original Application No.117/2014, Shantanu Sharma v. Union of India & Ors.* In the said order, following directions were issued:-

"32. Thus, our directions are as follows:-

- a. The TPPs may take prompt steps for scientific disposal of fly ash in accordance with the statutory notification issued by the MoEF&CC under the provisions of EP Act requiring 100% utilization and disposal of fly ash.***
- b. For the non-compliant TPPs, environmental compensation needs to be determined w.e.f. the cut-off date of 31.12.2017 as stipulated in the Notification dated 27.01.2016.*
- c. CPCB may accordingly compute and levy Environmental Compensation in accordance with the formula referred to above w.r.t. individual TPPs in accordance with law and submit compliance report to this Tribunal before the next date.***
- d. CPCB Guidelines of May 2019 for Utilization/Disposal of Fly ash for Reclamation of Low Lying Areas and in Stowing/Back filling of Abandoned Mines/Quarries may be complied.***
- e. Task Force of Ministry of Power and Ministry of Coal may recommend list of abandoned mines/quarries for mine back filling purposes to the CPCB. CPCB may notify the same accordingly for use by the TPPs as per applicable guidelines and permission from State PCBs/PCCs.*

- f. A Committee comprising of CPCB and IIT Roorkee may assess the environmental damage with regard to the breach sites at Vidhyanchal TPP and Essar TPP in Singrauli area and submit its recommendation within three months. CPCB shall be at liberty to engage any other technical expert for this purpose.**
- g. *The Committee comprising of Collector, CPCB and Member Secretary of MP State Pollution Control Board may assess the damage with regard to the breach sites at Vidhyanchal TPP and Essar TPP in Singrauli area to the crop and agricultural productivity and ensure effective restoration/remediation of affected sites within three months.*
- h. *CPCB may ensure implementation of action plans approved by it in accordance with timeline as provided in the statute.*
- i. *A joint Committee comprising of MoEF&CC, CPCB, IIT Roorkee and any other member considered necessary may submit quarterly progress report on recommendations of Expert Committee of Niti Aayog for enhanced utilization of fly ash in various sectors: mines, roads, cement, industries and bricks etc., along with its implementation status.*
- j. *The present order is subject to proceedings pending before the Hon'ble Supreme Court and where stay is operative, this order will not operate till stay continues and thereafter abide by orders of Hon'ble Supreme Court.*

Copy of this order may be conveyed to MoEF&CC, Ministry of Power, Ministry of Coal, CPCB, IIT Roorkee and MP State Pollution Control Board. CPCB may put the order on its website and communicate the same to all concerned TPPs."

10. In view of the above, we direct:

- i. Fly ash disposal may be undertaken as per the directions in the order of this Tribunal dated 12.02.2020 referred to above.
- ii. Fly ash disposal in mounds and backfilling of ash in abandoned mines may be undertaken as per the CPCB guidelines. If necessary, Indian Bureau of Mines, Dhanbad may also be consulted so that latest technology is utilized and all necessary safeguards are adopted.

- iii. Report of the CPCB regarding Cost apportionment for de-silting/restoration of Rihand Reservoir is accepted and further steps, including further study be undertaken as recommended by the CPCB. The U.P Irrigation Department may coordinate such study.
- iv. Anpara TPS and Lanco-Anpara power plants may stop ash pond overflow discharge into Rihand Reservoir to the extent the work remains unexecuted.
- v. The NTPC, Vidhyachal may deposit amount of Rs. 10 Crores as recommended by the Oversight Committee with the State PCB towards interim compensation, deducting the amount already deposited. The plant may also develop RCC wall around the plant in the manner recommended.
- vi. The liability for environmental compensation in respect of UPVUN, Anpara and NTPC Vidhyachal may be assessed by joint Committee of CPCB and the State PCB within two months. The nodal agency will be the State PCB for coordination and compliance.
- vii. The transportation measures may be adopted as per suggestions of the Committee and directions of the Hon'ble Supreme Court.

11. Since the term of the Committee has expired, further oversight work may be undertaken by a joint Committee of the CPCB with respective State PCB and the District Magistrates. The State PCBs will be the nodal agency for the respective States.

12. The newly constituted OC may furnish its reports quarterly by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. First such report may be furnished giving status as on 31.10.2020 by 15.11.2020 with copies to concerned stake holders for their response if any by 30.11.2020.

A copy of this order be sent to the State PCBs, CPCB, concerned District Magistrates, Indian Bureau of Mines, Dhanbad by email for compliance.

List for further consideration on 02.12.2020.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM

July 14, 2020
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