

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI

Application No. 122 of 2021

Ravimaran

...Applicant

Vs.

Union of India and Others

...Respondent

WRITTEN SUBMISSIONS FILED BY THE APPLICANT

It is submitted on behalf of the Applicant as follows:

1. The present application has been filed aggrieved by the illegal construction of pipelines by the 4th and 5th Respondents (TANGEDCO and NCTPS) as part of its stage-III power station, to transport ash without prior EC or CRZ clearance. The construction of these pipeline structures for stage-3 is an admitted fact and has been confirmed during the course of inspection by the Joint committee as well as in the reply filed on behalf of the 4th and 5th Respondent.
2. The project proponents commenced the construction of these pipelines despite not having prior clearance under the CRZ Notification, 2011 and the EIA Notification, 2006.
3. It is submitted that the construction is illegal because:
 - (i) The entire EIA process for NCTPS-Stage-III from Form-1 onwards does not disclose the need for the pipeline and hence does not assess the impact of construction of ash pipelines and is premised on the fact that there will be 100% collection of ash in dry form.
 - (ii) The EIA report does not assess the impact of discharge of ash into an ash pond. The fact that the existing ash pond is unlined has thus been conveniently suppressed.
 - (iii) Consequently, CRZ clearance recommendation and the Environmental clearance and the consents issued by TNPCB do not provide for the construction of these pipelines and the same is being constructed in violation of the clearance and consent conditions

- (iv) The inspection report of the committee appointed by this Hon'ble Tribunal clearly found the construction of the pipelines to be illegal

Hence, the illegally constructed pipelines have to be demolished immediately and the prayers for payment of environmental compensation, costs and prosecution of the violator has to be allowed.

EC process – No mention or assessment of impact of ash pipelines

Form-1

4. Form 1 submitted by the PP while listing out the area earmarked for the various components of the TPP at Part IV has no mention of the land required for ash pipeline. Part XXII which relates to methods used for handling ash, clearly states that collection will be through "ESP (99.9 efficiency), dry collection" and transport is through "vacuum and pressurized pumps". Thus, from the very beginning, ash handling through pipeline structures was never proposed and hence also not subjected to any form of assessment.
5. The importance of Form-1 and providing complete and accurate information in Form 1 has been extensively dealt with the Hon'ble Apex Court in **Hanuman Laxman Case [(2019) 15 SCC 401]** and the Court notes in Para 62 that "missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the EIA notification...".
6. In the present case, ash pipeline structure was not proposed to be constructed as per Form 1 and hence the same does not find place in the ToR and the entire EC process.
7. A reading of the EIA report for the project confirms that the structures constructed to carry the coal ash was not part of the original design of the plant and the impact of such structures has not been assessed. It is submitted that

ash pipelines are important components of a thermal power plants and their impact required to be properly assessed before being permitted.

8. The impact ash pipelines have on the environment, in the event of their breach or leak is evident from the apocalyptic damage caused to the Ennore backwaters by the ash pipelines of the existing pipelines of the same project proponent This Hon'ble Tribunal is seized of the matter is OA No. 8 of 2016 and the extent of damage caused has been documented in several reports.

EIA report:

9. In the present case, no such assessment has taken place as evidenced by the following references in the EIA report:
 - a. Land breakup- T. 2.5.11 contains the detailed land break up for the project and the same indicates that there is no allocation for ash pipeline- (See p. 40)
 - b. At Section 9.5.1, it is clear that "100% utilization of fly ash in dry form is envisaged"- (See p.42).
 - c. Table 9.5.1.2 also clearly demonstrates that the ash dyke is to be used only for emergency disposal for not more than 8 days. However it is clear that the ash pipeline being constructed is a permanent structure for routine use and no such structure would be required if the maximum conceived usage is a mere 8 days a year. (During emergency situations, ash can be transported to the dyke through trucks or other means as routinely done – there is no need to spend crores and construct infrastructure to be used only for a maximum cumulative period of 8 days a year)
 - d. The terms of reference for the project at TOR-14 contains the project layout and the pipeline connecting the powerplant to the ash dyke is not part of the layout (See p. 39)
 - e. The Terms of reference at XX, TOR-4, requires an assurance that a minimum of 500 m distance of plant boundary is kept from HFL of river system/streams etc. The EIA states: "the proposed site is 500 m away

from High tide line and 100 m from canal". (It is a fact that the ash pipeline traverses the intertidal area, the canal, the kosasthalai river and its backwaters).

- f. TOR XIX, TOR-4 seeks details of water body/nallah passing across the site and the EIA states that : " no water body/nallah are passing across the site". (However, the ash pipeline is being constructed across the kosasthalai river and its backwaters leading to obstruction, diversion and disturbance of water flow and tidal movement.)

10. Environmental Clearance

The environmental clearance for NCTPS – Stage -III was issued on 20.01.2016 (See page 47). The following conditions are of relevance and will demonstrate that the ash pipeline structures were never allowed under the EC and the continued construction of the same is in violation of the EC conditions.

- i. Under condition 5, facilities in the CRZ area are listed. There is no mention of pipeline structures. (see p.48)
- ii. Para 6 of the EC reads, " fly ash and bottom ash would be collected and stored in the silos ..."
- iii. Under condition 6, it is clear that "100 % Dry fly ash collection will be done by providing pressurized dry fly ash collection system"
- iv. Under Specific condition 7A- (xxxvi)- "Fly ash shall be collected in dry form and storage facilities (silos) shall be provided..." (See p.51)

11. CRZ Clearance:

The CRZ clearance recommendation for NCTPS Stage- III was issued by TNCZMA on 04.10.2011- (see page 44). In para 1, the proposal received has been described thus, "The Director of Environment has forwarded a proposal received from the for the construction of coal conveyer and cooling water system for the proposed SEZ Super Thermal power station (2x800)..."

12. It further states that

“the total length of the sea water pipeline and cooling water pipeline is about 4 km. The pipelines and coal conveyors cross Buckingham canal through CRZ...”.

Para 6 reads thus, “ In consonance with the recommendation fo the Tamilnadu State Coastal Zone Management Authority the Government accept the proposal of the Director of Environment to recommend to the Government of India, the proposal for the construction of coal conveyor and cooling water systems for the proposed ..”

13. The recommendation thus goes on to note that the project attracts CRZ Notification, 2011 as the above pipelines and conveyors fall in CRZ areas and goes on to recommend the project for CRZ clearance. None of the recommendation conditions pertain to the construction of ash pipeline structures and thus it is abundantly clear that the same was never proposed to be constructed. The word ash pipeline itself is absent.

14. However, the PP commenced the construction of the pipeline across the Buckingham canal, Kosasthaliayar, its flood plains and backwaters – all of which fall within the CRZ. This illegality was noticed and a stop work order was issued, however, the PP continued to construct in the non CRZ areas, in a blatant attempt to present a fait accompli and frustrate the law.

15. Therefore it is clear that the project proponent did not disclose the proposal to construct ash pipelines to carry ash to the existing unlined ash pond and filed false information in form -I suppressing the same, prepared an EIA report without mention of the ash pipelines and its impact or the impact of discharge of ash in the unlined ash pond, obtained recommendation from the TNCZMA only for coal conveyor and cooling water systems, obtained EC based on the EIA report, stipulating dry collection of flyash and bottom ash and thereafter with impunity commenced and continued with the construction of the ash pipeline in complete disregard of the law.

Joint Committee Inspection Report

16. Upon admission, this Hon'ble Tribunal appointed a Joint Committee to inspect the site and submit a report.

17. The observations of the committee in para 8 of the inspection report shows the extent of damage caused already by the dysfunctional ash pipelines of stage 1 and 2 of the 4th and 5th Respondent- therefore permitting the construction of a new pipeline for stage-3 without assessing the environmental impact will cause irreparable damage to the already heavily polluted and destroyed Ennore backwater region.

Para 8: "It is further submitted that the Joint Committee inspected the pipeline crossings across Buckingham Canal, backwaters and ash pond. Although leakage of flyash from pipelines were not noticed at the time of inspection, accumulation of fly ash deposits still persists in backwaters and Buckingham canal. This is due to leakage of ash slurry from the ageing pipes and also direct letting out from the plant into these water bodies as well. As a result, Buckingham canal and backwaters have become a cesspool of ash. This has grossly reduced the exchange of tidal prism by choking the flow due to ash deposits. The livelihood of the fisherfolk have been vastly affected and paved way for abatement of fishing activities. Mangrove patches vanished considerably due to sedimentation of fly ash deposits. The ash pond is found deposited with huge quantum of fly ash to an average depth of about 4 metre. Excavation and transportation of fly ash from the ash pond is noticed and required on a large scale. The earthen bund is about metre height surrounding the ash pond of which a portion of bund has been raised another 3 metre height to augment the storage of ash. Raising of bund for the entire circumference is incomplete. The pond is devoid of geo-membrane lining. There are no mechanisms for spraying/trickling of water to control spreading of fly ash in the air causing air pollution. The laying of pipelines for stage-2 is also observed but not in a continuous stretch."

18. At para 10, on scrutiny of the EIA Report, the Committee observes –

"it is mentioned that the total ash generated from the power plant will be about 806.4 TPD (Tons Per Day) for each unit considering maximum ash content of 12% in imported coal. The quantum of bottom ash generated and fly ash generated will be 161.28 and 645.12 Tons per day respectively considering calorific value of 6000 Kcal/kg and unit heat rate of 2100 Kcal/Kg. 100 % dry ash system is envisaged and fly ash will be disposed to the nearby cement plants and it is proposed to utilize the existing ash dyke of NCTPS for bottom ash disposal in case of emergency only. Besides fly ash and bottom ash would be collected and stored in silos and given to end users for manufacturing cement and brick purposes, impact on the environment would be negligible".

19. The Committee further notes that *"as per the EC obtained, the CRZ Clearance is granted only for construction of following foreshore facilities for this Stage-III TPP."* (ash pipelines are not mentioned)

20. The Joint Committee concluded on the issues raised by the Hon'ble Tribunal in the following manner:

(i) Whether there is any violation of CRZ notification 2011 or 2019 whichever is applicable or EIA Notification 2006 as amended from time to time

As per EC obtained, the CRZ clearance is granted only for construction of following foreshore facilities for stage-III TPP

- (a) Coal conveyor having length of 3.5 km and elevation of 6m for coal transportation form Ennore Port to NCTPS Stage-III TPP.*
- (b) Supporting trestles (Steel frames) for coal conveyor at about 6m/8m from ground level.*
- (c) Sea water intake from fore bay of NCTPS stage-II intake & outlet pipe to pre-cooling channel of NCTPS for discharge with intake pipe length of 3km and outlet pipe length of 1.5 km.*
- (d) GRP (Glass Reinforced Plastic) pipes on the ground level for cooling water inlet and coolant water outlet"*

The committee hence concludes that *"it is pertinent that environmental clearance and CRZ clearance was granted for foreshore facilities only and not for laying pipes which is a gross violation as per CRZ Rules, 2011."*

(ii) Whether environmental clearance cum CRZ clearance granted for the unit has covered the work of laying pipeline for discharge of ash slurry in the kosasthalaiyar river basin.

" The Environment clearance cum CRZ clearance was granted for expansion of 1* 800 MW TPP and foreshore facilities only. On scrutiny it was evident that laying of pipelines for transmitting slurry across kosasthalaiyar backwaters has not been covered in the present scope".

Reply affidavits filed by TNPCB and MoEF also confirm the illegality

21. It is submitted that TNPCB (R-6) in its reply also confirmed the same (See para 5,6,7 of reply). Specifically, in para 7, attention is drawn to the extensive damage caused by NCTPS Stage 1 and 2 and it is submitted that "TANGEDCO must strictly comply with the conditions imposed in the environmental clearance and CRZ clearance without violations and deviations for Stage 3 TPP, unlike the environmental damage already caused by the operation of stage 1 & 2 thermal plants due to ash deposits in the water bodies and the airborne fly ash in the nearby villages causing nuisance and air pollution".

22. It is submitted that the case of the Applicant is further supported by the counter affidavit filed by the 1st Respondent Ministry. The 1st Respondent also confirms that the EC does not provide for construction of an ash-pipeline structure and endorses the findings of the joint committee. In para 13 of the counter affidavit, after extensively extracting relevant portions from minutes of the EAC meetings as well as the environmental clearance, the 1st Respondent states "that in view of the foregoing paras it is submitted that the EC dated 20.01.2016 covers the

aspect of utilisation of fly ash in dry form and disposal thereof and CRZ clearance was granted for foreshore facilities as mentioned above only”.

23. In para 14, the 1st Respondent reiterates the Joint Committee’s finding that the laying of pipelines across Kosasthalaiyar backwaters “has not been covered in the present scope”.

PP’s admissions in the counter affidavit

24. The project proponent in its counter affidavit has in fact admitted that the EIA reports and other documents in the clearance process do not mention the laying of pipelines to carry ash to the ash pond. The PP does not even extract or refer to a single document where this aspect has been assessed or cleared. The Stage III thermal plant is a 1x800 MW super critical thermal plant and has its own infrastructure as seen from the EIA reports. In para 34 the PP has made submissions from sub-para (a) to (f) contending that those submissions prove that the EIA is not silent on the ash pipelines and ash pond. However, a careful reading of (a) to (f) demonstrates that these submissions prove the case of the Applicant and not vice-versa.

a. 34 (a) – concerns presentation made by PP to the TNSCZMA. PP states “that bottom ash would be disposed through dry bottom ash handling system and in case of emergency, bottom ash will be disposed in the ash-dyke of NCTPS” , thus making it clear that not just fly ash but also bottom ash was to be collected and disposed through dry handling system and only in case of emergency, bottom ash will be disposed in the existing ash dyke of NCTPS. Nowhere does the presentation talk about pipelines.

b. 34 (b)- PP talks about the Director of Environment forwarding the proposal to the MoEF. It is not clear how this proves the case of the project proponent. To the contrary, it has already been demonstrated that the recommendation of the TNSCZMA referred to herein does not permit construction of ash pipelines.

- c. 34 (c)- PP refers to presentation and additional information submitted to the EAC and refers to IRS Map with HTL/LTL demarcation. Once again, the PP has submitted "that the bottom ash of the proposed plant will be collected through dry bottom handling system" and further states that excess will be disposed through existing ash pond. The PP is attempting to confuse the Tribunal by mentioning the demarcation of coal conveyor, ash disposal line, cooling water inlet/outlet of existing NCTPS stage- I and II as though those structures depicted are for the subject NCTPS stage-III.

- d. 34 (d) – PP baldly states that the exhaustive EIA report contains information, details, records and documents and was submitted by PP to MoEF&CC. The extracts of the EIA report have been filed and they demonstrate that the EIA does not even talk about ash pipelines. The intention of the PP in making this submission is not known.

- e. 34 (e)- PP states that the EIA report "shows and mentions" the place of the existing ash pond of NCTPS and that ash disposal for the existing two plants is done through ash pipelines. The fact that the existing plants convey ash through pipelines is not in dispute. This contention is in fact an admission of the PP that that the EIA does not talk about ash pipelines for the NCTPS Stage-III. Had the EIA report mentioned the same, the PP would have explicitly stated so.

- f. 34 (f)- the PP is attempting to confuse ash utilisation timelines with ash disposal. It is clear from the records that ash pipelines have neither been envisaged nor assessed and cleared for the subject TPP i.e NCTPS stage- III. The PP thus has to collect and transport ash in dry form. It is seen from the EC that the PP had cited an MOU with Dalmia cements for ash utilisation. It is not known why the PP already forecasts their intended failure to comply with 100 % ash utilisation.

PP seeking amendment of EC defeats the EIA Notification

25. The project proponent TANGEDCO has now, after its violation being noticed by this Hon'ble Tribunal written to the 1st Respondent on 09.11.2021 seeking an amendment of the EC condition misleading the MoEF as if the inspection committee had directed that such an amendment be obtained. The said letter of TANGEDCO has been produced along with a Memo by the Applicant on 30.11.2021.
26. It is submitted that there is no provision for amendment of clearances post facto and the orders of this Hon'ble Tribunal cannot be used to obtain an amendment in the clearance which is impermissible in law.
27. Ash pipelines are major components of a thermal power station and ash disposal has an immense impact on the environment – both in its conveyance and its disposal. The construction of pipelines themselves exert considerable impact on the environment. The PP cannot seek an amendment to the EC already issued to regularize its illegal structure. The attempt to seek an amendment is designed to avoid the full rigor of the EC process – i.e to avoid preparation of impact assessment studies and public hearing and to surreptitiously obtain permission for the pipeline.
28. In **Keystone Realtors Pvt Ltd vs Anil Tharthare & Ors** (2020) 2 SCC 66, the Hon'ble Supreme Court was concerned with a case where a project proponent had obtained clearance under 8 (a) for a building and construction project and thereafter was increasing the built-up area by about 8085 Sq M. Instead of seeking EC, the project proponent therein sought amendment of the EC. The issue before the court was whether the "amended" EC granted without following the procedure stipulated under the EIA Notification is valid.
29. The project proponent contended that no fresh EC was required since the proposed increase was within the upper threshold of 1,50,000 Sq M. The Hon'ble Supreme Court rejected this contention and held,

“15. If clause (ii) of paragraph 2 does not cover a case where the expansion is within the limits stipulated by the Schedule, a project proponent may incrementally keep increasing the size of the project area over time resulting in a significant increase in the project size without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA Notification which is to ensure that any new or additional environmental impact is assessed and certified by the relevant regulatory authorities.”

30. The Court held that it was not open to the Respondent to grant an “amendment” to the EC without following the procedure set out in the EIA notification. The Court further held that the procedure existed so that environmental impact is assessed holistically considering all relevant factors (Para 20).

31. It is submitted that it is imperative that no amendment to the EC is granted without subjecting the proposed construction construction of the pipelines to the rigor of the EC process.

What needs to be done?

32. The PP has constructed the pipelines with great impunity and disregard of the law. This Hon’ble Tribunal even put them on notice on the date of admission that any construction made will be subject to the outcome of the proceeding. It is necessary to enforce the law strictly at least in cases of such egregious violations, that too by a habitual violator who already operates two polluting thermal power plants in the area.

33. The pipelines which were constructed illegally and cannot now be used to force a fait accompli or plead equity with this Hon’ble Court or the regulators. The Pipelines need to be demolished / removed, including the pillars laid and the

area has to be restored to its original condition. Only this will restore the majesty of the law and ensure environmental justice.

34. The PP can construct its thermal plant as provided in the EIA report – by collecting and evacuating bottom ash and fly ash in dry form. Emergency situations requiring disposal of bottom ash in the ash dyke – as described in the EIA – should be possible through fly ash bulker trucks. The plant's declared bottom ash generated is 161 tonnes per day – merely four trucks' worth of bottom ash per day. There is no need to drain the public exchequer for an environmentally damaging and highly unpopular infrastructure through an already overburdened river system. In the event the PP wants to attempt to install an ash conveyance system, it has to de novo go through the environmental clearance process.

35. Hence it is prayed that this Hon'ble Tribunal may take the above submissions on record and allow the application as prayed for and render justice.

Dated at Chennai on this the 22nd day of January, 2022

A.Yogeshwaran

Sd/-

Counsel for Applicant