

Accepted  
22/06/2024  
CPCB, Kolkata

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**EASTERN ZONE BENCH KOLKATA**

**OA No. 89/2024/EZ**

**IN THE MATTER OF:**

**GOPINATH MAJHI**

**...APPLICANT**

**VERSUS**

**STATE OF ODISHA & ORS...**

**...RESPONDENTS**

**INDEX**

S. No	Particulars	Annexures	Page Nos.
1	Reply on behalf of Respondent No. 09		1-7
2.	Annexure - I	I	8
3.	Annexure - II	II	9-10



**Mrinal Kanti Biswas**  
Scientist E & Regional Director,  
CPCB, Kolkata

Filed through

Counsel

Dated: 22/06/2024

Place: Kolkata

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**GOPINATH MAJHI**

**...APPLICANT**

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**STATE OF ODISHA & ORS.**

**...RESPONDENTS**

**REPLY ON BEHALF OF CENTRAL POLLUTION CONTROL BOARD i.e.  
RESPONDENT NO. 09**

I, Mrinal Kanti Biswas S/o Saroj Kumar Biswas, aged about 42 years, having office at the Regional Directorate, Central Pollution Control Board, Southend Conclave, Block No.502, 5<sup>th</sup> & 6<sup>th</sup> floor, 1582, Rajdanga Main Road, Kolkata-700107, do hereby state as follows:

1. That I, in capacity of the Scientist 'E' & Regional Director, Regional Directorate (East), Central Pollution Control Board (hereinafter referred to as "CPCB"), Kolkata, have made myself acquainted with the facts and circumstances of the instant case due to the official capacity as mentioned above and on the basis of available records. I am well versed with the facts and circumstances of the matter and as such competent & authorized to submit this reply on behalf of Respondent No. 9 i.e. CPCB
2. That, I have read and understood the averments made by Applicant in synopsis, list of dates, grounds and annexures enclosed with the Original Application and at the outset it is respectfully submitted that all averments made in the present Application are denied unless specifically admitted by the answering respondent and are also borne out of available record of the case.

**PRELIMINARY SUBMISSIONS: -**

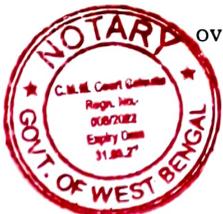
3. That, CPCB is a statutory Board constituted under Section 3 of The Water (Prevention and control) Act, 1974 (hereinafter The Water Act). It performs the functions under The Water Act, The Air (Prevention and control) Act, 1981 (hereinafter The Air Act) and The Environment (Protection) Act, 1986.
4. That, the Original Application is inter alia related to seeking a direction for removal of the Fly ash released due to breach of ash storage pond by M/s Odisha Power Generation Corporation Limited (hereinafter referred



to as 'OPGC Limited') from the adjoining government and private land including Fly ash within the backwater of Hirakud Reservoir and to restore the land to its original condition. A further direction has been sought for examining as to whether the existing and proposed ash pond is conforming to the siting criteria of 500 meter from the Hirakud Reservoir and impact of the Ash Pond Breach on the Hirakud Wetland.

**PARA-WISE REPLY:**

5. That, with regard to averments made in paras 1 to 3 of Original Application concerning the applicant and description of M/s OPGC Limited, which in turn are introductory statements about the applicant, respondent Industry and it is respectfully submitted that no comments are needed from this Answering Respondent.
6. That, with regard to averments made in para 4 of Original Application concerning the construction of Fly ash pond by the M/s OPGC Limited and alleged violation of stipulated conditions of the Environmental Clearance regarding the construction of Ash Ponds. It is respectfully submitted that no comments are offered over them by this Answering Respondent.
7. That, with regard to averments made in para 5 of Original Application concerning the Office Memorandum dated 28/08/2019 issued by Ministry of Environment, Forest and Climate Change (hereinafter referred to as 'MoEF&CC') in reference to environment clearances of thermal power plants and coal mines, it is a matter of record, thereby, no comments are needed from this Answering Respondent.
8. That, with regard to averments made in paras 6 to 8 of Original Application concerning the protection measures in fly ash pond and the "*Guidelines on design, construction, O&M, and annual certification of coal ash ponds*" issued by CPCB and CEA, including siting criteria of ash ponds, it is a matter of record, and violations if any under the rules / regulations etc. are to be dealt by the respective regulatory agency (i.e. SPCB).
9. That, with regard to averments made in para 9 of Original Application relating to the Google Earth Image depicting the proximity of Hirakud reservoir to Fly ash pond of M/s OPGC Limited and there upon alleging violation of the stipulated conditions of Environmental Clearance. It is respectfully submitted that no comments are offered over them by this Answering Respondent



10. That, with regard to averments made in para 10 of Original Application depicting the description of the Hirakud reservoir coupled up with its geographical and touristic importance, it is respectfully submitted that no comments are offered over them by this Answering Respondent.
11. That, the averments made in paras 11 to 14 of Original Application relates to the alleged Fly ash generation, its intended utilization, Ash Utilization Notification dated 31.12.2021 and Environmental Clearance conditions stipulated in EC letter etc. In this regard, it is humbly submitted that the same is a matter of record, thereby, no comments are offered by this Answering Respondent.
12. That, with regard to averments made in para 15 of Original Application concerning the alleged non-compliance of Environmental Clearance condition related to conducting of Radiological Impact Study, it is humbly submitted that status in this regard may be replied by the respective regulatory agency (i.e. SPCB).
13. That, with regard to averments made in para 16 of Original Application relating to the concerns of Applicant regarding the impact of existing Fly Ash Pond over the reservoir, it is respectfully submitted that the "*Guidelines on design, construction, O&M, and annual certification of coal ash ponds*" have been issued by CPCB and CEA and violations if any under the rules / regulations etc. are to be dealt by respective regulatory agency (i.e. SPCB).
14. That, with regard to averments made in para 17 of Original Application regarding the need of undertaking of study on impact of leaching on groundwater by CPCB, it is respectfully submitted that as per the conditions prescribed in the Environmental Clearance, the plant has to carry out regular monitoring of ground water especially around ash pond and plant areas. Further, project proponents are required to submit compliance report on EC conditions on six monthly bases to concerned regulatory authorities.
15. That, with regard to averments made in para 18 of Original Application concerning the breach of Ash Pond-C, it is respectfully submitted that a preliminary inspection was carried out by Odisha State Pollution Control Board (hereinafter The OSPCB) on 09/12/2023 & 10/12/2023 based on which directions under section 33(A) of The Water Act and section 31(A) of The Air Act and amendment thereafter were issued to M/s OPGC Limited on 11/12/2023 by OSPCB. Further, a Joint Inspection was also carried out on 27/02/2024 by a team of officials from



CPCB, OSPCB, and District Administration based on the matter raised by Mr. Suresh Pujari Hon'ble M.P., Lok Sabha. Further, considering the observations and recommendations of the Joint Inspection team, CPCB vide letter dated 01/04/2024 requested OSPCB to ensure compliance of the aforesaid directions dated 11/12/2023 and the recommendation given by the joint inspection team by M/s OPGC Limited (**Annexure-I**: CPCB's letter dated 01/04/2024 to OSPCB).

That extracts of CPCB's letter dated 01/04/2024 are as below:

- i. *"It is requested to ensure early compliance of the Odisha SPCB's directions and the recommendation given by the joint inspecting team by M/s OPGCL. Further, considering the level of the breach, Odisha SPCB may consider to direct M/s OPGCL for conducting an environmental damage assessment study through an institute of national repute, based on which Odisha SPCB may impose environmental compensation/penalty on the plant for restoration of the environment/affected area/person. An ATR in the matter may be provided to this office.*
- ii. *Further, as per the Annual Ash Compliance Audit Report 2022-23 submitted by M/s OPGCL, the plant had got conducted the ash dyke stability study of the ash pond/dyke through IIT Madras during April 2023 i.e. before the incident of breach held on 09/12/2023. In view of the breach in the same ash pond/dyke, the plant may be asked to also consult the expert to provide comments on the cause of breach."*

That, in compliance with the aforesaid CPCB's letter dated 01.04.2024, OSPCB has issued appropriate instructions-cum-directions to M/s OPGC Limited vide letter dated 29/04/2024, (**Annexure-II**: OSPCB's letter dated 29/04/2024 to M/s OPGC Limited):

That extracts of OSPCB's directions dated 29.04.2024 are as below:

- iii. *"In view of above, you are directed to submit up-to-date status on compliance to the direction issued by the Board as well as recommendations given in the joint inspection report. Further, you are directed to conduct an Environmental Damage Assessment study through an institute of national repute for*



*assessment of environmental compensation/ penalty for restoration of environment / affected area /persons due to breach of ash pond and submit report to this office within 15 days for taking further necessary action for imposition of environmental compensation.*

iv. *Also, you are requested to consult an expert to provide comments on the cause of the breach ash pond and submit a study report to this office for onward submission to CPCB.*

v. *This may be treated as most URGENT.*

16. That, with regard to averments made in para 19 of Original Application concerning the violation of the Environment Clearance and Consent to Operate (CTO) conditions regarding development of greenbelt around the Fly ash pond, it is humbly submitted that status in this regard may be replied by the respective regulatory agency (i.e. SPCB).

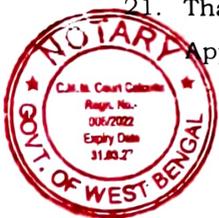
17. That, with regard to averments made in para(s) 20 concerning the incident of breach of ash pond of M/s OPGC Limited on 09/12/2023, it is respectfully submitted that these averments have already been answered above.

18. That, with regard to averments made in paras 21 to 23 of Original Application relates to allegations of breach of social impact assessment notification published by the Revenue Disaster Department on 08/12/2023, the reporting of 76 coal ash pond incidents, raising of issue by BJP MP during zero hour in Parliament of India on 11.12.2023 etc. The same are matters of record, thereby, no comments are offered by this Answering Respondent. However, violations if any under the rules / regulations etc. are to be dealt by respective regulatory agency (i.e. SPCB).

19. That, with regard to averments made in para 24 of Original Application relating to the grant of Consent to Establish (CTE) for combined dyke height raising of Ash Pond, it is humbly submitted that it may be suitably replied by OSPCB.

20. That, with regard to averments made in para 25 of Original Application concerning about the operational status of ash ponds of M/s OPGC Limited, it is a matter of record, and thereby no comments are offered by this Answering Respondent.

21. That, with regard to averments made in para 26 of Original Application concerning the violations of CTO conditions and renewal of



CTO by OSPCB, it is humbly submitted that it may be suitably replied by OSPCB.

22. That, with regard to averments made in paras 27 to 37 of Original Application which brings out various Rules and Regulations for the wetland areas and land allocation rules for construction, associated duties of the authorities under them and under Wetlands (Conservation and Management) Rules, 2010, the restrictions of activities in wetlands (Rule-4), the objectives of the Wetlands (Conservation and management) Rules, 2017, the signing of Ramsar Convention on Wetlands by India, etc. are matters of record, and thereby no comments are offered by this Answering Respondent.
23. That, with respect to averments made in Paras 38 & 39 relating to - i) constitution of grievance committee on 07/02/2020 under the Wetland Rules but it being non-functional and ii) no steps being taken to protect and preserve the integrity of the wetland from the threats of industrialization. In this regard, it is humbly submitted that the allegations may be suitably replied by State Government.
24. That, with regard to averments made in para 40 of Original Application relating to the Hon'ble Supreme Court's interpretation of "Polluter Pays" principle and its application, it is a matter of record, and thereby no comments are offered by this Answering Respondent.
25. That, with regard to averments made in Grounds of Original Application, it is respectfully submitted that the submissions made in the preceding paragraphs are re-iterated and are not repeated for the sake of brevity.
26. That in light of the above submission, it is respectfully submitted that this Answering respondent i.e. CPCB, shall abide by any order(s) or direction(s) passed by this Hon'ble tribunal in the instant OA.

  
**DEPONENT**



**BEFORE THE NATIONAL GREEN TRIBUNAL  
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**...APPLICANT**

**VERSUS**

**STATE OF ODISHA & ORS...**

**...RESPONDENTS**

**AFFIDAVIT**

I, Mrinal Kanti Biswas, son of Sri Saroj Kumar Biswas, aged about 42 years, having office at the Scientist 'E' & Regional Directorate, Central Pollution Control Board, Southend Conclave' Block No.502, 5<sup>th</sup> & 6<sup>th</sup> Floor, 1582, Rajdanga Main Road, Kolkata-700107, do hereby solemnly affirm and sincerely state as follows: -

1. That the accompanying reply may be read part and parcel of the present affidavit as I am competent to swear this affidavit.
2. That the accompanying reply has been drafted and filed under my instructions and authority the contents thereof are true and correct on the basis of the record maintained during ordinary course of business of CPCB and available records and documents and the contents of the same are read over and explained to me and are not repeated herein for the sake of brevity.

  
**DEPONENT**

I, Mrinal Kanti Biswas, working as Scientist 'E' and posted as Regional Director at Regional Directorate, Central Pollution Control Board, Kolkata-700107, the respondent No.9 the above reply is correct and true on the basis of the record of the cases as mentioned in the day-to-day affairs of the CPCB. Nothing has been concealed therefrom or mis-stated.

Verified at Kolkata on this the 21<sup>st</sup> Day of June 2024



**N. DASGUPTA**  
Notary  
Regn. No. 006/2022  
3, Bankshal Street  
Calcutta-700001

**SOLEMNLY AFFIRMED**  
&  
Declared Before me  
on Identification Adv.  
  
NOTARY  
**N. DAS GUPTA**  
C.M.M. Court  
Govt. W.B.

**21 JUN 2024**

  
**DEPONENT**

Annexure - D. - 8 -



केन्द्रीय प्रदूषण नियंत्रण बोर्ड  
CENTRAL POLLUTION CONTROL BOARD  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार  
MINISTRY OF ENVIRONMENT FOREST & CLIMATE CHANGE GOVT OF INDIA

PARLIAMENT MATTER

EMAIL & SPEED POST

IPC-II/TPP/PI-20/4/2021/29

April 01, 2024

To,

The Member Secretary,  
Odisha State Pollution Control Board,  
Paribesh Bhawan, A-118, Nilakantha Nagar,  
Unit - VIII, Bhubaneswar – 751 012, Odisha

Sub: Matter raised during Zero Hour by Sh. Suresh Pujari, Hon'ble M.P, Lok Sabha - reg.

Sir,

Please refer to the Odisha SPCB's letter no. 3068/IND-I-CON(MISC)/1619 dated 04.03.2024 regarding inspection of IB Thermal Power Sation, Jharsuguda, Odisha of M/s Odisha Power Generation Corporation Limited (OPGCL) in respect of breach of ash pond/dyke and flow of ash/contaminated water into a large area of agricultural fields and water sources, including Hirakud Reservoir, and informing about the directions issued by Odisha SPCB to the plant.

It is requested to ensure early compliance of the Odisha SPCB's directions and the recommendation given by the joint inspecting team by M/s OPGCL. Further, considering the level of the breach, Odisha SPCB may consider to direct M/s OPGCL for conducting an environmental damage assessment study through an intitute of national repute, based on which Odisha SPCB may impose environmental compensation/penalty on the plant for restoration of the environment/affected area/person. An ATR in the matter may be provided to this office.

Further, as per the Annual Ash Compliance Audit Report 2022-23 submitted by M/s OPGCL, the plant had got conducted the ash dyke stability study of the ash pond/dyke through IIT Madras during April 2023 i.e. before the incident of breach held on 09.12.2023. In view of the breach in the same ash pond/dyke, the plant may be asked to also consult the expert to provide comments on the cause of breach.

Yours faithfully,

[Nazimuddin]

Divisional Head-IPC-II

Copy to:

Dr. Satyendra Kumar (Director, HSM Division), : for information.  
Ministry of Environment, Forest and Climate Change,  
Indira Paryavaran Bhawan, Jor Bagh Road,  
Aliganj, New Delhi – 110 003



‘परिवेश भवन’ पूर्वी अर्जुन नगर, दिल्ली-110032

Parivesh Bhawan, East Arjun Nagar, Delhi-110032

Tel : 43102030, 22305792, वेबसाइट/Website : www.cpcb.nic.in

Annexure - N - 9 -



EPABX : 2561909/2562847  
E-mail: paribesh1@ospcboard.org  
Website: www.ospcboard.org

## STATE POLLUTION CONTROL BOARD, ODISHA

(DEPT., OF FOREST, ENVIRONMENT & CLIMATE CHANGE, GOVT. OF ODISHA)  
Paribesh Bhawan, A/118, Nilakantha Nagar, Unit - VIII  
Bhubaneswar - 751 012, INDIA

No 6342 /IND-I-CON- 104

Dt 29.04.2024  
By Speed Post / E-Mail

To

**The Director (Operation),  
M/s. OPGC Limited,  
1b Thermal Power Station, Banharpali,  
Dist - Jharsuguda-768234**

**Sub : Environmental Compensation w.r.t. breach of Ash Pond -Reg.**

Ref: i) Letter No. IPC-II/TPP/PI-20/4/2021, dtd. 30.01.2024 of CPCB, Delhi  
ii) Joint inspection report communicated vide letter No. 3068, dtd. 04.03.2024  
iii) Letter No. IPC-II/TPP/PI-20/4/2021, dtd. 01.04.2024 of CPCB, Delhi

Sir,

With reference to the above, this is to inform you that a joint inspection was carried by the officials from RD- Zonal Office, CPC, Kolkata, District Administration, Jharsuguda and Regional Office, SPC Board, Jharsuguda on dtd. 27.02.2024 as per direction of CPCB, Delhi vide letter under reference. The copy of the inspection report has been forwarded to CPCB, Delhi for compliance to the matter raised by Shri Suresh Pujari, Hon'ble MP Lok Sabha.

Now, CPCB has intimated to this office vide letter under reference (copy enclosed), that the unit shall ensure early compliance of the direction issued by SPCB, Odisha as well as recommendations given in the joint inspection report. CPCB has also requested this office to direct you to conduct an Environmental Damage Assessment study through an Institute of National Repute. Further, CPCB has intimated that, you are required to consult an expert to provide comments on the cause of breach of ash pond, as the ash dyke stability study report has been carried out by IIT, Madras in April, 2023 i.e., before the incident of breach.

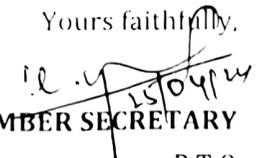
In view of above, you are directed to submit up-to-date status on compliance to the direction issued by the Board as well as recommendations given in the joint inspection report. Further, you are directed to conduct an Environmental Damage Assessment study through an institute of national repute for assessment of environmental compensation/ penalty for restoration of environment / affected area / persons due to breach of ash pond and submit report to this office within 15 days for taking further necessary action for imposition of environmental compensation.

Also, you are requested to consult an expert to provide comments on the cause of the breach ash pond and submit a study report to this office for onward submission to CPCB.

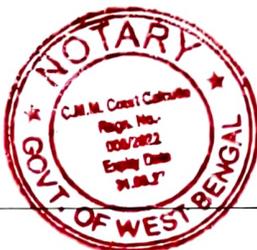
This may be treated as most URGENT.

Encl : As above

Yours faithfully,

  
MEMBER SECRETARY

P.T.O





Memo No. 6343 /dtd. 29.04.2024

Copy forwarded to the **Divisional Head, IPC-II, Central Pollution Control Board, Parivesh Bhawan, East Arjun Nagar, Delhi - 110032** for information.

*Md* 25/4/24

**CHIEF ENV. ENGINEER**

Memo No. 6344 /dtd. 29.04.2024

Copy forwarded to the **Regional Officer, SPC Board, Jharsuguda** for information and necessary action.

*Md* 25/4/24

**CHIEF ENV. ENGINEER**

