

**BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL  
BENCH, NEW DELHI  
MA NO. /2023  
Original Application No. 436/2023**

**IN THE MATTER OF:**

Association of Fly Ash Bricks Manufacturers ...Applicant

Versus

Union of India & Ors. ...Respondents

**I N D E X**

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Place: New Delhi  
Dated:10.10.2023

THROUGH



**GIGI C. GOERGE  
ADVOCATE  
FOR RESPONDENT No. 2  
CHAMBER NO.457, LAWYER BLOCK-1  
DELHI HIGH COURT, NEW DELHI  
MOB-9810625315  
EMAIL-gigicgeorge.adv42@yahoo.in**

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 436 OF 2023

IN THE MATTER OF: -

Association of Fly Ash Bricks Manufacturers..... Petitioner

VERSUS

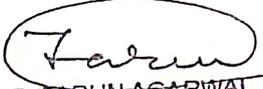
Union of India & Ors. .... Respondents

COUNTER AFFIDAVIT/REPLY ON BEHALF  
OF RESPONDENT NO. 2 (MINISTRY OF POWER)

I, Tarun Agarwal, S/o Sh. Surendra Kumar Agarwal, aged about 35 years, working as Deputy Director at Central Electricity Authority, Ministry of Power, Sewa Bhawan, R.K. Puram, New Delhi-110066, do hereby solemnly affirm and declare as under:-

1. That I am working as Deputy Director at Central Electricity Authority, Ministry of Power namely, Respondent No. 2. I am acquainted with the facts and circumstances of the case as per the records maintained by the Respondent No. 2 and as such I am competent to swear this Counter Affidavit on behalf of the Respondent No. 2 and also filing this Counter Affidavit on behalf of the said respondent.
2. I have read and understood the Original Application and am filing this Affidavit as reply thereto.



  
तरुण अग्रवाल / TARUN AGARWAL  
Deputy Director

3. It is submitted that the contents of the Original Application that have neither been specifically admitted hereunder nor are a matter of record are denied.
4. That the deponent craves liberty to raise any further submissions or file additional affidavits if need arises during the course of arguments.
5. That the petitioner association, through this petition, inter-alia has prayed before the Hon'ble Tribunal to set aside the notifications dated 31.12.2021 and 30.12.2022 issued by MoEF&CC (Respondent No.1) along-with the advisory dated 22.02.2022 issued by the answering respondent and allow the petitioners to continue to provide and make available the fly ash to the fly ash bricks and fly ash-based production units as provided in the earlier notifications dated 14.09.1999 and subsequent amendments which was applicable as on 31.12.2021.
6. That the setting up of Thermal Power Plant is a de-licensed activity as per the Electricity Act, 2003. Utilities take their own techno-economic and commercial decisions in running their plant in a viable manner. Thermal Power Plants selling power to distribution licensee are under the regulatory jurisdiction of Appropriate Electricity Regulatory Commission and any expense which is pass through is being scrutinized by them.
7. That the primary objective has always been to ensure 100 percent utilisation of ash with least burden on the electricity consumers. With this objective, Ministry of Power (MoP) issued the Letter dated 22.02.2022 prescribing therein step-wise procedure to ensure 100%



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utilisation of ash within the timelines prescribed by MoEF&CC in its Notification and at the same time ensuring transparency in ash disposal by plants and to keep the burden on electricity consumers at a bare minimum. Where any ash remains unsold, Thermal Power Plants are advised to provide it free and also meet the transportation cost.

8. That the various Gazette Notifications and their amendments issued by MoEF&CC from time to time had the sole aim to protect the environment. Implementation of various provisions of these Notifications are being monitored by MoEF & CC through CPCB/SPCB offices as per the provision of the Environmental (Protection) Act, 1986.
9. It is also submitted that the Power plants were asked to take appropriate steps at their level to ensure maximum utilization of ash to comply with applicable notification of MoEF&CC
10. That as per para 5 of advisory dated 22.02.2022 of the the answering respondent, all coal/lignite based TPPs are advised to provide Ash to the prospective user Agencies for all new commitments for supply of ash as per guidelines which have been framed in accordance with MoEF & CC Notification dated 31.12.2021.
11. That the Hon'ble National Green Tribunal (NGT) vide Order dated 25.08.2022 in lieu of OA No. 327 of 2022 Amaravati Fly Ash Bricks Manufacturers Association vs. Union of India & Others had observed that the Advisory issued by MoP on 22.02.2022 shall not



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be enforced and shall remain in abeyance till further orders by this Tribunal to the contrary.

12. In accordance with the direction of Hon'ble NGT, the answering respondent vide its letter dated 06.12.2022 (**Annexure-R1**) informed all coal/lignite based TPPs to keep the implementation of MoP's Advisory dated 22.02.2022 in abeyance till the matter attains finality before the Hon'ble NGT. The Power plants were further asked to take appropriate steps at their level to ensure maximum utilization of ash to comply with applicable Notification of MoEF&CC.
13. That the answering respondent has also filed Civil Appeals (Dy. Nos. 5195 & 5196 of 2023) before the Hon'ble Supreme Court challenging Hon'ble NGT's orders dated 18.01.2022 and 25.08.2022 respectively imposing stay on this Ministry's Advisory dated 22.02.2022.
14. That the Hon'ble Supreme Court vide its order dated 24.02.2023 in Civil Appeals Dy. Nos. 5195 and 5196 of 2023 (**Annexure-R2**) has ordered that, there shall be stay of operation and effect of the impugned judgments of Hon'ble NGT order dated 25.08.2022 in O.A. No. 327 of 2022. In pursuance of the direction of Hon'ble Supreme Court, the answering respondent had withdrawn its letter dated 06.12.2022 and accordingly directed all coal/lignite based TPPs to dispose of the Ash to prospective user agencies as per the procedure prescribed in Advisory dated 22.02.2022. The said matters are still pending with the Hon'ble Supreme Court for adjudication.



  
तरुण अग्रवाल / TARUN-AGARWAL

15. Therefore, it is humbly submitted that in view of the aforementioned facts and circumstances, the Hon'ble Tribunal may pass such orders as deemed fit by the Hon'ble Court and thus render justice.

**VERIFICATION**

Verified at Delhi on this 9<sup>th</sup> day of September, 2023 that the contents of the above affidavit are true to my knowledge on the basis of documents derived from the records and nothing material has been concealed therefrom.

*Tarun*

**DEPONENT**

तरुण अग्रवाल/TARUN AGARWAL  
उप निदेशक/Deputy Director  
केन्द्रीय विद्युत प्राधिकरण/C.E.A.  
विद्युत मंत्रालय/Ministry of Power  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi-००



*[Signature]*  
**IDENTIFIED BY**

*[Signature]*  
**ATTESTED**  
**BALJIT SINGH**  
**NOTARY DELHI-R-10615**  
Govt. of India  
NEW DELHI

- 9 OCT 2023

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No. 15/2/2022-EC&ET-1  
Government of India  
Ministry of Power

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Annexure-R1

Shram Shakti Bhawan, New Delhi  
Dated: 6<sup>th</sup> December, 2022

To,

1. CMDs/ MDs of Coal / Lignite based Thermal Power Plants (Central/ State/ Private)
2. Principal Secretary (Power/ Energy) of All States/ UTs
3. Chairperson, Central Electricity Authority

**Subject: Supply of Fly ash to the end users by the Power Plants to increase fly ash utilization- reg.**

Sir/Madam,

Pursuant to Ministry of Environment, Forest & Climate Change's Notification dated 31.12.2021, Ministry of Power, issued an Advisory on 22.02.2022 to all coal/lignite based TPPs for providing Ash to the prospective user agencies for all new commitments for supply of Ash as per the prescribed procedure for disposal of ash.

2. Hon'ble National Green Tribunal (NGT) vide Order dated 25.08.2022 passed in OA No.327 of 2022 in Amaravati Fly Ash Bricks Manufactures Association Vs. Union of India & Others has observed that the Advisory issued by MoP on 22.02.2022 **shall not be enforced and shall remain in abeyance till further orders by this Tribunal to the contrary.**

3. In pursuance of the above direction of Hon'ble NGT, all coal/lignite based TPPs are hereby informed to keep the implementation of Ministry of Power's Advisory dated 22.02.2022 in abeyance till the matter attains finality before the Hon'ble NGT.

4. Power Plants may take appropriate steps at their level to ensure maximum utilisation of ash to comply with applicable Notification of MoEF&CC.

5. This issues with the approval of the Hon'ble Minister of Power & NRE.

  
(Sunil Kumar Sah)

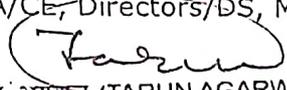
Under Secretary to the Govt. of India  
Tel: 011-23719710

**Copy to:**

1. Secretary (MOEF&CC), Government of India
2. Secretary (MoRTH), Government of India
3. Secretary (MoHUA), Government of India
4. Secretary, CERC
5. Secretaries of all SERCs/ JERCs

**Copy for kind information to:**

- i. PS to Hon'ble Minister of Power.
- ii. PS to Hon'ble Minister of State for Power.
- iii. PPS to Secretary (Power), All Joint Secretaries/EA/CE, Directors/DS, MOP.

  
तरुण अग्रवाल/TARUN AGARWAL

ITEM NO.31+53

REVISED  
COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 5195/2023

(Arising out of impugned final judgment and order dated 25-08-2022  
in OA No. 327/2022 passed by the National Green Tribunal)

UNION OF INDIA

Petitioner(s)

VERSUS

AMARAVATI FLY ASH BRICKS MANUFACTURERS  
ASSOCIATION & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.34628/2023-CONDONATION OF DELAY  
IN FILING and IA No.34630/2023-EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENT and IA No.34631/2023-EX-PARTE STAY )

WITH

Diary No(s). 5196/2023 (XVII)

( IA No.36288/2023-CONDONATION OF DELAY IN FILING and IA  
No.36292/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT  
and IA No.36296/2023-EX-PARTE STAY)

CIVIL APPEAL Diary No(s). 5546/2023

([TO BE TAKEN UP ALONG WITH ITEM NO.31 I.E. Diary No.  
5195/2023.].... IA No.40262/2023-CONDONATION OF DELAY IN FILING and  
IA No.40263/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT  
and IA No.40272/2023-STAY APPLICATION and IA No.40259/2023-  
PERMISSION TO FILE PETITION (SLP/TP/WP/..) )

Date : 24-02-2023 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI  
HON'BLE MS. JUSTICE BELA M. TRIVEDIFor Petitioner(s) Mr. K.M.Nataraj, A.S.G.  
Mr. Gurmeet Singh Makker, AOR  
Ms. Ruchi Kohli, Adv.  
Ms. Swarupama Chaturvedi, Adv.  
Mr. Shiv Mangal Sharma, Adv.  
Mr. Balendu Shekhar, Adv.

Signature Not Verified

Digitally signed by  
Ashwini Kumar  
Date: 2023.02.03  
16:54:29 +05'  
Reason:

Mr. Chetan Sharma, A.S.G.  
Mr. Shailesh Madiyal, AOR  
Mr. Sudhanshu Prakash, Adv.  
Mr. Vaibhav Sabharwal, Adv.  
Mr. Rajan Parmar, Adv.  
Mr. Vinayaka S Pandit, Adv.  
Mr. Akshay Kumar, Adv.

For Respondent(s) Mr. Gaurav Kumar Bansal, Adv.  
Mr. Sumit Kumar, AOR

Mr. Gaurav Kumar Bansal, Adv.  
Ms. Shomila Bakshi, AOR  
Ms. Nandita Bansal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Permission to file appeal is granted in Civil Appeal Diary  
No(s). 5546/2023

Delay condoned.

Appeals admitted.

Issue notice, returnable in four weeks.

In the meanwhile, there shall be stay of operation and effect  
of the impugned judgment(s).

(VIRENDER SINGH)  
BRANCH OFFICER

(ASHWANI KUMAR)  
ASTT. REGISTRAR-cum-PS

ITEM NO.31+53

COURT NO.5

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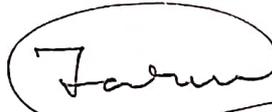
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ASTT. REGISTRAR-cum-PS

  
तरुण अग्रवाल/TARUN AGARWAL  
उप निदेशक/Deputy Director  
केन्द्रीय विद्युत प्राधिकरण/C.E.A.  
विद्युत मंत्रालय/Ministry of Power  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi-66