

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

M.A. No. 24/2024/EZ

IN

Original Application No. 152/2017/EZ

IN THE MATTER OF:

LEGAL AID SERVICES WEST BENGAL

... APPLICANT

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NOS. 2 AND 3

I, Rajesh Kumar Shaw, son of Sri Bijoy Kumar Shaw, aged about 53 years, by faith Hindu, by occupation Service and working for gain at Damodar Valley Corporation, DVC Towers, VIP Road, Kolkata – 700 054, do hereby solemnly affirm and declare as under:

1. That I am working as the Assistant Manager (Law) with the Respondent No. 2. I have been duly authorized by the Respondent Nos. 2 and 3 to affirm the present affidavit. I am well conversant with the facts and circumstances of the case. I am competent to sign and affirm the present counter affidavit on behalf of the Respondent Nos. 2 and 3.
2. The answering respondents have been served with a copy of the letter petition dated 15.02.2024 issued by the Secretary of Latiaboni & Nityanandapur Anchal Krishak Kalyan Samity vide email on 20.07.2024 (hereinafter referred to as the "said petition") and I have understood the true meaning, contents and purport thereof.
3. Save and except what are matters of record, each and every allegation contained in the said petition, is denied and disputed as if the same are set out in seriatim and specifically traversed.
4. It is denied that the farmers of Latiaboni and Nityanandapur have been badly affected by ashes or other residuals left by respondent

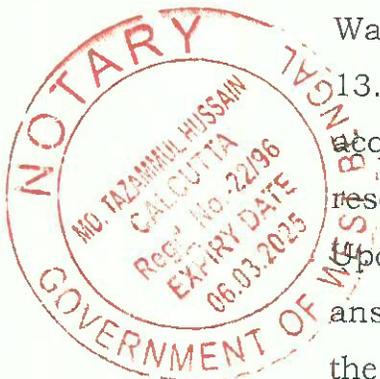


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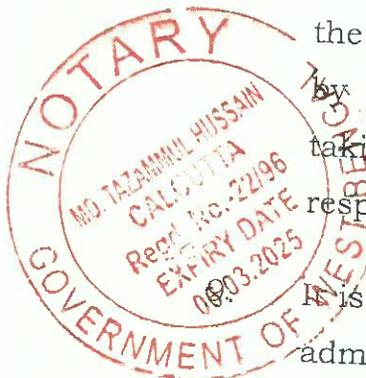
no. 3 as alleged or at all. I say that pursuant to the order dated 09.05.2022 passed by this Hon'ble Tribunal, the Respondent no.2 had duly deposited the sum of Rs. 20 crores without prejudice to its rights and contention. I further say that vide order dated 14.02.2023, this Hon'ble Tribunal had directed the District Magistrate to transfer a sum of Rs. 7.92 crores from the aforesaid deposit of Rs. 20 crores to the farmers in their bank accounts. The remaining amount of Rs. 12.08 crore was directed to be transferred to the State PCB for restoration measures. The order dated 14.02.2023 further directed a joint committee to be constituted which would suggest an action plan for restoration measures. A meeting was held by the joint committee on 02.03.2023 in the presence of the representatives of the answering respondents. A copy of the judgement and order dated 14.02.2023 is annexed hereto and marked with the letter "A".

5. It is pertinent to mention that a meeting was held on 20.06.2022 at the office chamber of the Additional District Magistrate (General), Bankura when the answering respondents were directed to pay compensation to the farmers as per the erstwhile list of beneficiaries who were paid compensation for the period 2017-2018 at the rate of agricultural department prevailing in 2022. I say that the answering respondents have paid a sum of Rs. 5,71,44,509/- in the month of June 2022 itself to the farmers towards crop compensation. The said petition does not disclose this fact.
6. It is denied that the answering respondents have surveyed any lands of any farmers as alleged or at all. It is stated that upon enquiry it was intimated to the answering respondents by the office of the Executive Engineer Damodar Headworks Division, Irrigation & Waterways Directorate, Govt. of West Bengal vide letters dated 13.09.2018, 01.10.2018 and 19.11.2018, the details of lands acquired for construction of Nityanandapur Dam and Jamgari Dam reservoir in mouzas Sarangpur, Bankdaha, Latiaboni and Subirara. Upon such information being received from the said office, the answering respondents have not surveyed the lands as detailed in the aforesaid letters. In this regard, copies of the letters dated



13.09.2018, 01.10.2018 and 19.11.2018 are annexed hereto and collectively marked with the letter "B".

7. I say that meetings were held on 08.07.2024 and 30.07.2024 to discuss various issues including the dispute with regard to the title of lands and the issue of '00' payment or part payment. I say that if lands have been acquired by the Irrigation Department for construction of Nityanandapur Dam and Jamgari Dam reservoir, then the answering respondents cannot be expected to pay compensation for those lands to any third parties. It would appear from the minutes of the meeting held on 30.07.2024 that 18 farmers who have allegedly not been paid crop compensation since 2014-2015 were directed to submit relevant documents to the district authority for further course of action. I say that questions relating to the ownership of the lands in question, as to whether or not the same lie with the farmers, are yet to be determined by the district authorities and as such, payment of any compensation by the answering respondents with respect to such lands is premature and can only be undertaken by the answering respondents once the same is determined by the district authorities to be in favour of the farmers and directions in that regard are issued upon the answering respondents by the district authorities.
8. It is stated that the answering respondents have no expertise to resolve the dispute over title of lands. I say that compensation should be paid to the rightful owners having proper title over the lands. It is also to be noted that the answering respondent is a statutory body and would ultimately disburse public money and therefore it is of great importance that the compensation is paid to the rightful owner. Further, it is judicious to verify the affected lands by a committee to be constituted by the District Administration taking members from State Administration and also the answering respondents to identify the actual affected farmers.
- It is denied that there have been any discussions with the district administration or DVC (MTPS) management on 14.08.2023 or 29.09.2023 or 22.12.2023 or 02.01.2024 or 27.02.2024 or that no step has yet been taken for the welfare of the affected farmers as

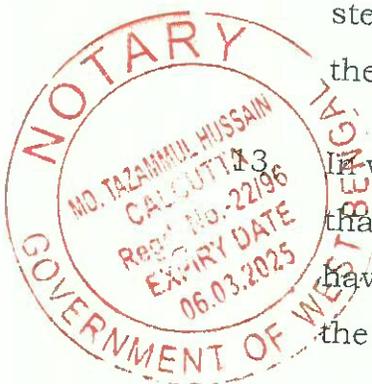


alleged or at all. I say that the answering respondents have deposited Rs. 20 crores as per the direction of this Hon'ble Tribunal. Rs.12.08 crore was directed to be transferred to the State PCB for restoration measures. The answering respondents removed the ash deposited over the silt from the irrigation canal (Right Bank Main Canal, i.e., RBMC & Left Bank Main Canal i.e. LBMC) way back in the month of September 2022. The answering respondents had also made it clear that the dams are very old and were constructed even prior to commissioning of the MTPS and over these years huge quantity of silt has been deposited in the said dams and channels. The answering respondents are neither liable for deposit of silt nor does they have any expertise to remove the silt. In this regard, copies of the letters dated 12.12.2022 and 04.06.2024 issued by the answering respondents are annexed hereto and collectively marked with the letter "C".

10. With regard to the allegation that the answering respondents have not paid any compensation to the affected farmers for the period of 2022-23, 2023-24, I say that Rs.12.08 crores deposited by the answering respondents, was allotted for restoration measures and the answering respondents cannot be held liable for crop compensation every year if no measures have been taken for restoration despite deposit of such amount.
11. I say that the answering respondents have also requested the district authority for early preparation of the plan for resettlement of the villagers of Latiaboni.
12. I specifically say that the answering respondents have taken due steps and care in preventing environmental pollution and as such there is no pollution due to ash in the surrounding areas.

In view of the above facts and circumstances, it is humbly submitted that the said petition be disposed of as the answering respondents have complied with the directions of this Hon'ble Tribunal and also the District Authorities.

14. That the statements contained in paragraph 1 of the foregoing affidavit are true to my knowledge and the statements made in



paragraphs 2 to 12 are based on information derived from records and are believed by me to be true and the rest are my respectful submissions before this Hon'ble Tribunal.

Fajis Kumar Ghosh

Prepared in my office

Deponent is known to me

Identified by me

Swarajit Das

Advocate

Swarajit Das

Advocate

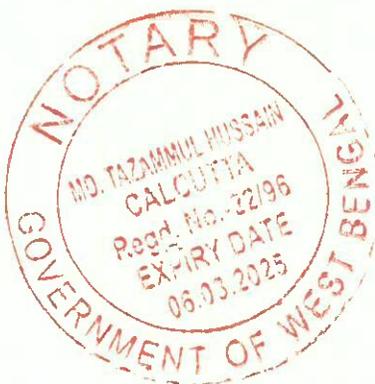
Solemnly affirmed and declared before me on Identification

[Signature]

MD. T. HUSSAIN Notary
City Civil Court
Kolkata

Regd. No 22/96 Govt of W.B.

12 AUG 2024



Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE
KOLKATA**

(By Video Conference)

Original Application No. 152/2017/EZ
I.A. No. 230/2022/EZ

Legal Aid Services, West Bengal

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 14.02.2023

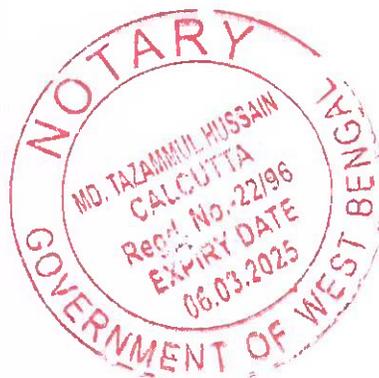
**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Respondent(s): Mr. Swarajit Dey, Advocate for R-2 & 3
Mr. Sibojyoti Chakraborty, Advocate for R-4
Mr. Nayan Chand Bihani, Advocate a/w
Mr. Rajib Ray, Advocate for R-5 & 6

ORDER

1. Grievance in this application is against violation of environmental norms in operation of Mejia Power Plant by Damodar Valley Corporation, Kolkata in Bankura District in failure to scientifically handle fly ash generated from the plant. It is stored in ash ponds which are overflowing, contaminating drinking water and food items. Hazardous ash waste is causing air pollution disturbing day-to-day life of the inhabitants. Agricultural lands in the area are also affected by pollution resulting in loss to the farmers of the area.

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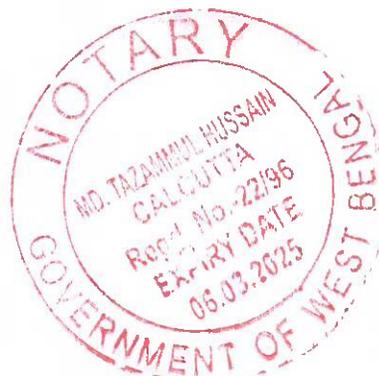


Procedural History

2. The Tribunal issued notice inter alia to the Project Proponent (PP), and the State PCB and also sought factual report from the District Magistrate with reference to the allegations. Thereafter, the matter has been monitored based on factual reports. Vide order dated 31.03.2022, considering the affidavit dated 21.03.2022 on behalf of the State PCB on the issue of management of waste as well as management of fly ash and other related issues, sought updated status reports from the State PCB and the District Magistrate.

Order dated 9.5.2022

3. Thereafter, vide order dated 09.05.2022, affidavit of the District Magistrate dated 03.05.2022 was considered to the effect that loss had been caused to the agricultural lands by pollution from the plant of the PP for which compensation was assessed. The Tribunal found that there was failure on the part of the PP in timely disposal of fly ash for which it was liable to pay compensation on 'Polluter Pays' principle for restoration of environment and public health. The Tribunal constituted a four member committee comprising Regional Officer, MoEF&CC, Regional Officer, CPCB, State PCB and District Magistrate, Bankura. The Tribunal also referred to the earlier order on the same issue pertaining to other thermal plants generating fly ash and failing to dispose of or manage the same i.e. the order dated 18.01.2022 in O.A. No. 164/2018, *Ashwini Kumar Dubey vs. Union of India & Ors.* The Tribunal directed that the report of District Magistrate on assessment of compensation be treated as tentative and final compensation be determined having regard to nature of violations and financial capacity of PP, after giving opportunity to the PP. Interim compensation of Rs. 20 crores were directed to be deposited with District Magistrate, Bankura, to be kept in a separate account to be



utilized for restoration of environment. Operative part of the order dated 09.05.2022 is reproduced below:-

“

4. We are of the view that in view of serious violations in failure to timely dispose of flyash which have continued affecting the lives and property of the inhabitants, the Project Proponent needs to take remedial measures to prevent any further pollution and is also liable to pay compensation on 'Polluter Pays' principle, to be utilized for restoration of environment and public health. For this purpose, we constitute a joint Committee comprising (i) Regional Officer, MoEF&CC, (ii) Regional Officer, CPCB, (iii) State PCB and (iv) District Magistrate, Bankura. The State PCB will be the nodal agency for coordination and compliance.

Order of the Tribunal dated 18.1.2022 in matters dealing with violation of norms for flyash management

5. This Tribunal has dealt with the identical issue vide order dated 18.01.2022 in O.A. No. 164/2018, Ashwini Kumar Dubey vs. Union of India & Ors. and other connected matters as follows:

“Conclusions and Way forward:

16. From the above, it is seen that there is a long way to go for protecting environment and public health. The failures of the TPPs are alarming. We find no reason not to accept all the recommendations and to direct remedial action. Thus, all recommendations are accepted and further remedial action is directed to be taken by the statutory regulators which also be overseen by the joint Committees of CPCB, State PCB and the jurisdictional District Magistrates, with CPCB and State PCBs being nodal agencies. Quarterly reports may now be filed with the MoEF&CC to be considered by the Coordinating Committee being hereby constituted.

Compensation for past violations, including breach of Rihand reservoir and flyash pond of Sasan Power:

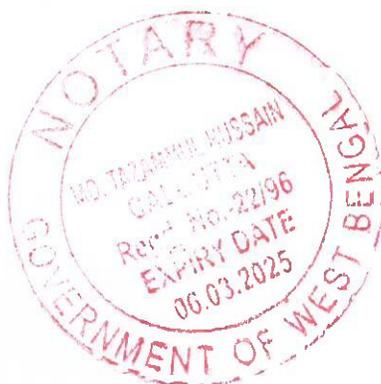
17. With regard to past violations generally, we leave the issue of compensation determination to the joint Committees of CPCB, State PCB and District Magistrate within next three months, following due process. Compensation determination must be based on principles laid down inter alia in *M.C.Mehta, (1987) 1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257*, having regard to the period of violation and financial capacity of the unit. Mere days of violations are not conclusive without reference to financial capacity of the units. Directions already issued on the subject will be treated as final as far as this Tribunal is concerned, subject to final orders of the Hon'ble Supreme Court in appeals filed by the concerned units, if any.

Compliance of recommendations of the Committees and road map for Future:



18. In the light of alarming situation found on verification of the ground situation, it is clear that serious violations are continuing in failure to prevent air and water pollution by the TPPs. Requisite air pollution control devices (FGD) are not being installed, CAQMS are not being installed at proper locations and connected to CPCB server, **huge accumulated flyash is not being utilised nor scientifically stored, the ponds/dykes are not properly maintained resulting in polluting water sources, air and land, apart from adverse health effects and damage to the flora and fauna.** Singrauli and Sonebhadra industrial areas prominently figure in the CEPI index prepared by CPCB in respect of polluted industrial areas. This Tribunal has already issued directions to take remedial measures in respect of such areas to achieve the laid down norms for air, water and soil in OA No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels". Though the appeals are pending before the Hon'ble Supreme Court against some of the directions, consistent with the interim orders of the Hon'ble Supreme Court, steps need to be taken to enforce environmental norms in the said areas. The said directions be complied and the statutory regulators may maintain constant vigil against any violations. Further, as responsible corporate organizations, the PPs need to discharge corporate social responsibility to honour dignity of human life and the environment. Bottlenecks in remedying the situation of not utilising accumulated flyash need to be tackled on war footing. Concerted and coordinated joint efforts by the PPs and the statutory regulators at highest levels are required. The process in which fly ash can be utilized include backfilling of mines, construction of roads, brick kilns and cement companies. It is stated during the hearing that the TPP may be prepared to provide fly ash to the brick kilns but the unresolved issue is of transportation. Such issue is not unsurmountable and can be resolved by coordination with brick kiln owners association and other stake holders. Suggested to permit brick making at or close to the site of storage of fly ash may need consideration. **There is need to lay down siting, design and engineering standards for the location, disposal, maintenance and regulation of Ash Ponds as breach of a fly ash ponds result in great disaster. There is also need to undertake public health and risk impact assessment in the areas of operation of TPPs and generators of fly ash.** Another obstacle pointed out is advisory issued by the Ministry of Power dated 22.9.2021 that instead of being given free, flyash should be sold which is not viable as there are no buyers perpetuating storage to the detriment of environment and public health and cost. Not only such advisory is unmindful of disastrous consequences, it is also against recent statutory notification of MoEF&CC dated 31.12.2021. We find it to be so and direct that being detrimental to environment, the same will not be enforced. In compelling circumstances, to protect environment, we find it necessary to constitute a high-level Coordination Committee in exercise of our powers under section 15 of the NGT Act to be called the 'Flyash Management and Utilization Mission'. Details follow in later part of the order.

Notification dated 31.12.2021 issued by the MoEF&CC extending time for utilisation of flyash:



19. The TPPs have referred to notification dated 31.12.2021 extending timeline for utilisation of legacy flyash for 10 years, subject to scientific management and subject to 100% utilisation on average of three years and not less than 80% in any given year. We are not called upon to express any opinion about the validity of Notification dated 31.12.2021. It may appear to be a retrograde step in the face of quantity of fly ash noted earlier and continuing damage to the environment and public health unless the notification is properly understood and interpreted so as to remedy the situation. The object of the notification is not to nullify the mandate of the Air Act or standards of air quality or other norms but to provide further opportunity beyond the earlier timelines, consistent with the mandate of complying with laid down environmental norms which are part of right to life. Violation of laid down air quality and other norms cannot and is not sought to be condoned. Nor there is any bar against remedying deteriorated environment of polluted industrial areas, in the light of recommendations based on ground verification. Thus, **issue of violation of norms due to unscientific management and handling of fly ash remains including action against persons responsible for pollution and accidents, apart from issue of compliance of specific conditions of notification dated 31.12.2021 remains.**

20. As noted earlier, situation caused by failure of the TPPs to manage fly ash scientifically and to utilize the same within reasonable time is highly detrimental to public health and emergency measures in Mission Mode are required. **Even the Notification dated 31.12.2021 recognizes the alarming situations which is clear from the text of the Notification itself quoted below:**

"S.O. 5481(E).—Whereas by notification of the Government of India in the erstwhile Ministry of Environment and Forests vide S.O.763 (E), dated the 14th September, 1999, as amended from time to time, the Central Government, issued directions for restricting the excavation of top soil for manufacturing of bricks and promoting the utilisation of fly ash in the manufacturing of building materials and in construction activity within a specified radius of three hundred kilometres from the coal or lignite based thermal power plants;

And whereas, to implement the aforesaid notification more effectively based on the polluter pays principle (PPP) thereby ensuring 100 per cent utilisation of fly ash by the coal or lignite based thermal power plants and for the sustainability of the fly ash management system, the Central Government reviewed the existing notification; and whereas environmental compensation needs to be introduced based on the polluter pays principle;

And whereas, there is a need to conserve top soil by promoting manufacture and mandating use of ash based products and building materials in the construction sector;



And whereas, there is a need to conserve top soil and natural resources by promoting utilisation of ash in road laying, road and flyover embankments, shoreline protection measures, low lying areas of approved projects, backfilling of mines, as an alternative for filling of earthen materials;

And whereas, it is necessary to protect the environment and prevent the dumping and disposal of fly ash discharged from coal or lignite based thermal power plants on land;

And whereas, in the said notification the phrase 'ash', has been used which includes both fly ash as well as bottom ash generated from the Coal or Lignite based thermal power plants;

And whereas, the Central Government intends to bring out a comprehensive framework for ash utilisation including system of environmental compensation based on polluter pays principle;

And whereas, a draft notification on ash utilisation by coal or lignite thermal power plants in supersession of the notification of the Government of India, Ministry of Environment and Forests published in the Gazette of India, Extra Ordinary part II, section 3, sub-section (i) vide S.O.763 (E), dated the 14th September, 1999, by notification in exercise of the powers conferred under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule (5) of the Environment (Protection) Rules, 1986, was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide G.S.R. 285(E), dated the 22nd April, 2021 inviting objections and suggestions from all persons likely to be affected thereby before the expiry of sixty days from the date on which copies of the Gazette containing the said draft provisions were made available to the public;

And, whereas all the objections and suggestions received from all persons likely to be affected thereby in respect of the said draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule (5) of the Environment (Protection) Rules, 1986, and in supersession of the Notification S.O.763 (E), dated the 14th September, 1999 except as respect things done or omitted to be done before such supersession, the Central Government hereby issues the following notification on ash utilisation from coal or lignite thermal power plants which shall come into force on the date of the publication of this notification, namely:-

A. Responsibilities of thermal power plants to dispose fly ash and bottom ash.-

- (1) Every coal or lignite based thermal power plant (including captive or co-generating stations or both) shall be primarily responsible to ensure 100 per cent



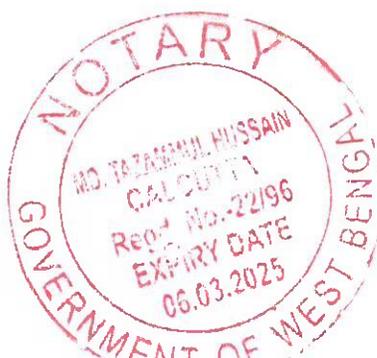
utilisation of ash (fly ash, and bottom ash) generated by it in an eco-friendly manner as given in subparagraph (2);

(2) The ash generated from coal or lignite based thermal power plants shall be utilised only for the following eco-friendly purposes, namely:-

- (i) Fly ash based products viz. bricks, blocks, tiles, fibre cement sheets, pipes, boards, panels;
- (ii) Cement manufacturing, ready mix concrete;
- (iii) Construction of road and fly over embankment, Ash and Geo-polymer based construction material;
- (iv) Construction of dam;
- (v) Filling up of low lying area;
- (vi) Filling of mine voids;
- (vii) Manufacturing of sintered or cold bonded ash aggregate;
- (viii) Agriculture in a controlled manner based on soil testing;
- (ix) Construction of shoreline protection structures in coastal districts;
- (x) Export of ash to other countries;
- (xi) Any other eco-friendly purpose as notified from time to time.

(3) A committee shall be constituted under the chairmanship of Chairman, Central Pollution Control Board (CPCB) and having representatives from Ministry of Environment, Forest and Climate Change (MoEFCC), Ministry of Power, Ministry of Mines, Ministry of Coal, Ministry of Road Transport and Highways, Department of Agricultural Research and Education, Institute of Road Congress, National Council for Cement and Building Materials, to examine and review and recommend the eco-friendly ways of utilisation of ash and make inclusion or exclusion or modification in the list of such ways as mentioned in Subparagraph (2) based on technological developments and requests received from stakeholders. The committee may invite State Pollution Control Board or Pollution Control Committee, operators of thermal power plants and mines, cement plants and other stakeholders as and when required for this purpose. Based on the recommendations of the Committee, Ministry of Environment, Forest and Climate Change (MoEFCC) may publish such eco-friendly purpose.

(4) Every coal or lignite based thermal power plant shall be responsible to utilise 100 per cent ash (fly ash and bottom ash) generated during that year, however, in no case shall utilisation fall below 80 per cent in any year, and the thermal power plant shall achieve average ash utilisation of 100 per cent in a three years cycle:



Utilisation percentages of thermal power plants	First compliance Cycle to meet 100 per cent utilisation	Second compliance cycle onwards, to meet 100 per cent utilisation
>80 per cent	3 years	3 years
60-80 per cent	4 years	3 years
<60 per cent	5 years	3 years

Provided that the three years cycle applicable for the first time is extendable by one year for the thermal power plants where ash utilisation is in the range of 60-80 per cent, and two years where ash utilisation is below 60 per cent and for the purpose of calculation of percentage of ash utilisation, the percentage quantity of utilisation in the year 2021- 2022 shall be taken into account as per the table below:

Provided further that the minimum utilisation percentage of 80 per cent shall not be applicable to the first year and first two years of the first compliance cycle for the thermal power plants under the utilisation category of 60-80 per cent and

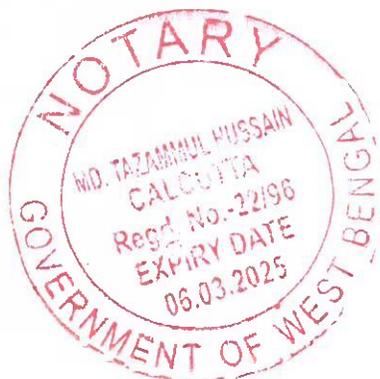
Provided also that 20per cent of ash generated in the final year of compliance cycle may be carried forward to the next cycle which shall be utilised in the next three years cycle along with the ash generated during that cycle.

(5) The unutilised accumulated ash i.e. legacy ash, which is stored before the publication of this notification, shall be utilised progressively by the thermal power plants in such a manner that the utilization of legacy ash shall be completed fully within ten years from the date of publication of this notification and this will be over and above the utilisation targets prescribed for ash generation through current operations of that particular year:

Provided that the minimum quantity of legacy ash in percentages as mentioned below shall be utilised during the corresponding year and the minimum quantity of legacy ash is to be calculated based on the annual ash generation as per installed capacity of thermal power plant.

Year from date of publication	1 st	2 nd	3 rd - 10 th
Utilisation of legacy ash (in percentage of Annual ash)	At least 20 per cent	At least 35 per cent	At least 50 per cent

Provided further that the legacy ash utilisation shall not be required where ash pond or dyke has stabilised and the reclamation has taken place with greenbelt or plantation and the concerned State Pollution Control Board shall certify in this regard. Stabilisation and



reclamation of an ash pond or dyke including certification by the Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) shall be carried out within a year from the date of publication of this notification. The ash remaining in all other ash ponds or dykes shall be utilised in progressive manner as per the above mentioned timelines.

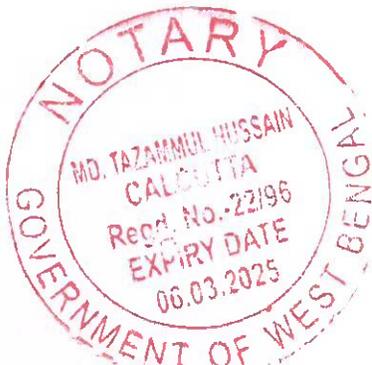
Note: The obligations under sub-paragraph (4) and (5) above for achieving the ash utilisation targets shall be applicable from 1st April, 2022.

(6) Any new as well as operational thermal power plant may be permitted an emergency or temporary ash pond with an area of 0.1 hectare per Mega Watt (MW). Technical specifications of ash ponds or dykes shall be as per the guidelines of Central Pollution Control Board (CPCB) made in consultation with Central Electricity Authority (CEA) and **these guidelines shall also lay down a procedure for annual certification of the ash pond or dyke on its safety, environmental pollution, available volume, mode of disposal, water consumption or conservation in disposal, ash water recycling and greenbelt, etc., and shall be put in place within three months from the date of publication of this notification.**

(7) Every coal or lignite based thermal power plant shall ensure that loading, unloading, transport, storage and disposal of ash is done in an environmentally sound manner and that all precautions to prevent air and water pollution are taken and status in this regard shall be reported to the concerned State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) in Annexure attached to this notification.

(8) Every coal or lignite based thermal power plant shall install dedicated silos for storage of dry fly ash silos for at least sixteen hours of ash based on installed capacity and it shall be reported upon to the concerned State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) in the Annexure and shall be inspected by Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) from time to time.

(9) Every coal or lignite based thermal power plant (including captive or co-generating stations or both) shall provide real time data on daily basis of availability of ash with Thermal Power Plant (TPP), by providing link to Central Pollution Control Board's web portal or mobile phone App for the benefit of actual user(s).



(10) Statutory obligation of 100 per cent utilisation of ash shall be treated as a change in law, wherever applicable.

B. For the purpose of utilisation of ash, the subsequent sub-paras shall apply.—

(1) All agencies (Government, Semi-government and Private) engaged in construction activities such as road laying, road and flyover embankments, shoreline protection structures in coastal districts and dams within 300 kms from the lignite or coal based thermal power plants shall mandatorily utilise ash in these activities:

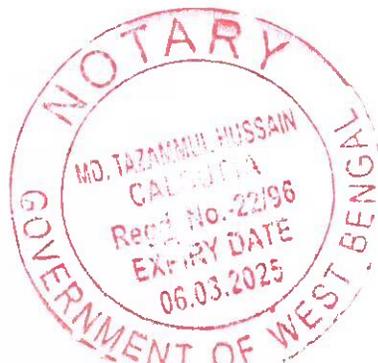
Provided that it is delivered at the project site free of cost and transportation cost is borne by such coal or lignite based thermal power plants.

Provided further that thermal power plant may charge for ash cost and transportation as per mutually agreed terms, in case thermal power plant is able to dispose the ash through other means and those agencies makes a request for it and the provisions of ash free of cost and free transportation shall be applicable, if thermal power plant serves a notice on the construction agency for the same.

(2) The utilisation of ash in the said activities shall be carried out in accordance with specifications and guidelines laid down by the Bureau of Indian Standards, Indian Road Congress, Central Building Research Institute, Roorkee, Central Road Research Institute, Delhi, Central Public Works Department, State Public Works Departments and other Central and State Government Agencies.

(3) It shall be obligatory on all mines located within 300 kilometres radius of thermal power plant, to undertake backfilling of ash in mine voids or mixing of ash with external Overburden dumps, under Extended Producer Responsibility (EPR). All mine owners or operators (Government, Public and Private Sector) within three hundred kilometres (by road) from coal or lignite based thermal power plants, shall undertake measures to mix at least 25 per cent of ash on weight to weight basis of the materials used for external dump of overburden, backfilling or stowing of mine (running or abandoned as the case may be) as per the guidelines of the Director General of Mines Safety (DGMS):

Provided that such thermal power stations shall facilitate the availability of required quantity of ash by delivering ash free of cost and bearing the cost of transportation or cost or transportation arrangement decided on mutually agreed terms and mixing of ash



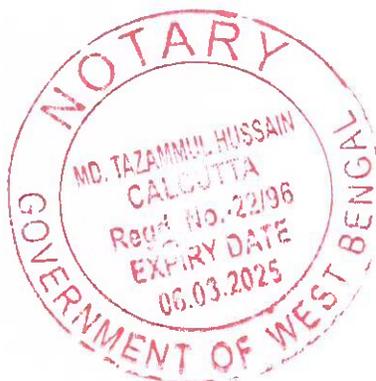
with overburden in mine voids and dumps shall be applicable for the overburden generated from the date of publication of this notification and the utilisation of ash in the said activities shall be carried out in accordance with guidelines laid down by the Central Pollution Control Board, Director General of Mines Safety and Indian Bureau of Mines.

Explanation.- For the purpose of this sub-paragraph, it is also clarified that the provisions of ash free of cost and free transportation shall be applicable, if thermal power plants serve a notice on the mine owner for the same and the mandate of using 25 per cent of ash for mixing with overburden dump and filling up of mine voids shall not be applicable unless a notice is served on the mine owner by thermal power plant.

(4) (i) All mine owners shall get mine closure plans (progressive and final) to accommodate ash in the mine voids and the concerned authority shall approve mine plans for disposal of ash in mine voids and mixing of ash with overburden dumps. The Ministry of Environment, Forest and Climate Change (MoEFCC) has issued guidelines on 28th August, 2019 regarding exemption of requirement of Environmental Clearance of thermal power plants and coal mines along with the guidelines to be followed for such disposal.

(ii) The Ministry in consultation with Central Pollution Control Board (CPCB), Director General of Mine Safety (DGMS) and Indian Bureau of Mines (IBM) may issue further guidelines time to time to facilitate ash disposal in mine voids and mixing with overburden dumps and it shall be the responsibility of mine owners to get the necessary amendments or modifications in the permissions issued by various regulatory authorities within one year from the date of identification of such mines.

(5) (i) There shall be a committee headed by Chairperson, Central Pollution Control Board (CPCB) with representatives from Ministry of Environment, Forest and Climate Change, Ministry of Power, Ministry of Mines, Ministry of Coal, Director General of Mine Safety and Indian Bureau of Mines for identification of mines for backfilling of mine voids with ash or mixing of ash with overburden dump including examination of safety, feasibility (not economic feasibility) and aspects of environmental contamination and the committee shall get updated quarterly reports prepared regarding identified mines (both underground and opencast) for the stakeholder Ministries or Departments and the committee shall start identifying the suitable mines immediately after the publication of this notification.



(ii) Thermal power plants or mines shall not wait for disposal of ash till the identification is done by the above mentioned committee, to meet the utilisation targets mandated as above.

(6) Filling of low lying areas with ash shall be carried out with prior permission of the State Pollution Control Board or Pollution Control Committee for approved projects, and in accordance with guidelines laid down by Central Pollution Control Board (CPCB) and the State Pollution Control Board or Pollution Control Committee (PCC) shall publish approved sites, location, area and permitted quantity annually on its website.

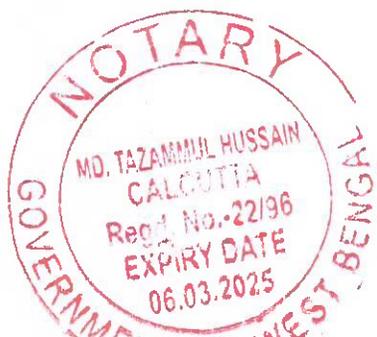
(7) Central Pollution Control Board after engaging relevant stakeholders, shall put in place the guidelines within one year for all types of activities envisaged under this notification including putting in place time bound online application process for the grant permission by State Pollution Control Boards (SPCBs) or Pollution Control Committees (PCCs).

(8) All building construction projects (Central, State and Local authorities, Govt. undertakings, other Govt. agencies and all private agencies) located within a radius of three hundred kilometres from a coal or lignite based thermal power plant shall use ash bricks, tiles, sintered ash aggregate or other ash based products, provided these are made available at prices not higher than the price of alternative products.

(9) Manufacturing of ash based products and use of ash in such products shall be in accordance with specifications and guidelines laid down by the Bureau of Indian Standards, Indian Road Congress, and Central Pollution Control Board.

C. Environmental compensation for non-compliance-

(1) In the first two years of a three years cycle, if the coal or lignite based thermal power plant (including captive or co-generating stations or both) has not achieved at least 80 per cent ash (fly ash and bottom ash) utilisation, then such non-compliant thermal power plants shall be imposed with an environmental compensation of Rs. 1000 per ton on unutilised ash during the end of financial year based on the annual reports submitted and if it is unable to utilise 100 per cent of ash in the third year of the three years cycle, it shall be liable to pay an environmental compensation of Rs. 1000 per ton on the unutilised quantity on which environmental compensation has not been imposed earlier:



Provided that the environmental compensation shall be estimated and imposed at the end of last year of the first compliance cycle as per the various utilisation categories as mentioned in sub-paragraph (4) of Para A.

(2) Environmental compensation collected by the authorities shall be deposited in the designated account of Central Pollution Control Board.

(3) In case of legacy ash, if the coal or lignite based thermal power plant (including captive or co-generating stations or both) has not achieved utilisation equivalent to at least 20 per cent (for the first year), 35 per cent (for the second year), 50 per cent (for third to tenth year) of ash generated based on installed capacity, an environmental compensation of Rs. 1000 per ton of unutilised legacy ash during that financial year shall be imposed and if the utilization of legacy ash is not completed at the end of 10 years, an environmental compensation of Rs.1000 per ton shall be imposed on the remaining unutilised quantity which has not been imposed earlier.

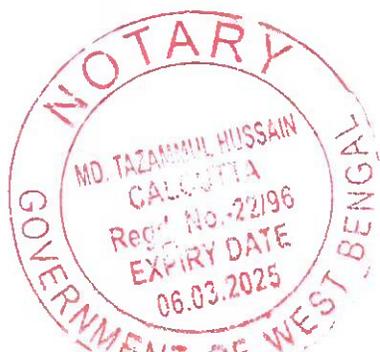
(4) It shall be the responsibility of the transporters or vehicle owner to deliver ash to authorised purchaser or user agency and if it is not complied, then an environmental compensation of Rs. 1500 per ton on such quantity as mis-delivered to unauthorised users or non- delivered to authorised users will be imposed besides prosecution of such non-compliant transporters by State Pollution Control Board (SPCB) or Pollution Control Committee (PCC).

(5) It is the responsibility of the purchasers or user agencies to utilise ash in an eco-friendly manner as laid down at para B of this notification and if it is not complied, then an environmental compensation of Rs. 1500 or per ton shall be imposed by State Pollution Control Board (SPCB) or Pollution Control Committee (PCC).

(6) If the user agencies do not utilise ash to the extent obligated under para B or the extent to which they have been intimated through Notice(s) served under sub-paragraph (1) of para D, whichever is lower, they shall be liable to pay Rs. 1500 per ton of ash for the quantity they fall short off:

Provided that the environmental compensation on building constructions shall be levied at Rs.75/- per square feet of built up area of construction.

(7) (i) The environmental compensation collected by Central Pollution Control Board from the thermal power plants and other defaulters shall be used towards the safe disposal of the unutilised ash and



the fund may also be utilised for advancing research on use of ash including ash based products.

(ii) The liability of ash utilisation shall be with thermal power plants even after imposition of environmental compensation on unutilised quantities and in case thermal power plant achieves the ash utilisation of any particular cycle after imposition of environmental compensation in subsequent cycles, the said amount shall be returned to thermal power plant after deducting 10 per cent of the environmental compensation collected on the unutilised quantity during the next cycle and deduction of 20 per cent, 30 per cent, and so on, of the environmental compensation collected is to be made in case of utilisation of ash in subsequent cycles.

D. Procedure for supply of ash or ash based products.—

(1) The owner of thermal power plants or manufacturers of ash bricks or tiles or sintered ash aggregate shall serve written notice to persons or agencies who are liable to utilise ash or ash based products, offering for sale, or transport or both.

(2) Persons or user agencies who have been served notices by owner of thermal power plants or manufacturers of ash bricks or tiles or sintered ash aggregate, if they have already tied up with other agencies for the purpose of utilisation of ash or ash products, shall inform the thermal power plant accordingly, if they cannot use any ash or ash products or use reduced quantity.

E. Enforcement, Monitoring, Audit and Reporting.—

(1) The Central Pollution Control Board (CPCB) and the concerned State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) shall be the enforcing and monitoring authority for ensuring compliance of the provisions and shall monitor the utilisation of ash on quarterly basis. Central Pollution Control Board shall develop a portal for the purpose within six months of date of publication of the notification. The concerned District Magistrate shall have concurrent jurisdiction for enforcement and monitoring of the provisions of this notification.

(2) (i) Thermal power plants shall upload monthly information regarding ash generation and utilisation by 5th of the next month on the web portal. Annual implementation report (for the period 1st April to 31st March) providing information about the compliance of provisions in this notification shall be submitted by the 30th day of April, every year to the Central Pollution Control Board, concerned State Pollution

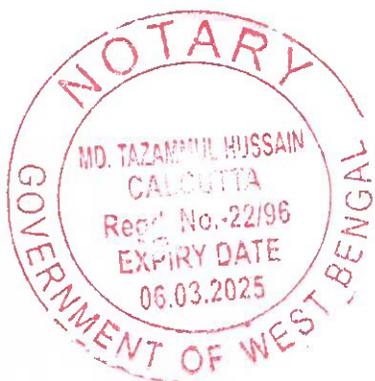


Control Board or Pollution Control Committee (PCC), Central Electricity Authority (CEA), and concerned Integrated Regional Office of Ministry of Environment, Forest and Climate Change by the coal or lignite based thermal power plants. Central Pollution Control Board and Central Electricity Authority shall compile the annual reports submitted by all the thermal power plants and submit to Ministry of Environment, Forest and Climate Change by 31st May.

(ii) All other user agencies shall submit consumption or utilisation or disposal of ash and use of ash based products as mandated in this notification in the compliance report of Environmental Clearance (EC) issued by Ministry of Environment, Forest and Climate Change or State Level Environment Impact Assessment Authority (SEIAA) or Consent to Operate (CTO) issued by State Pollution Control Board (SPCB) or Pollution Control Committee (PCC), whichever is applicable. The Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) shall publish annual report of ash utilisation of all other agencies except thermal power plants to review the effective implementation of the provisions of the notification.

(3) For the purpose of monitoring the implementation of the provisions of this notification, a committee shall be constituted under the Chairperson, Central Pollution Control Board (CPCB), with members from Ministry of Power, Ministry of Coal, Ministry of Mines, Ministry of Environment, Forest and Climate Change, Ministry Road Transportation and Highways, Department of Heavy Industry as well as any concerned stakeholder(s), to be nominated by the Chairman of the committee. The committee may make recommendations for effective and efficient implementation of the provisions of the notification. The committee shall meet at least once in six months and review annual implementation reports and the committee shall also hold stakeholder consultations for monitoring of ash utilisation as mandated by this notification by inviting relevant stakeholder(s) at least once in six months. The committee shall submit the six monthly report to Ministry of Environment, Forest and Climate Change (MoEFCC).

(4) For the purpose of resolving disputes between thermal power plants and users of ash or manufacturer of ash based products, the State Governments or Union territory administration constitute a Committee within three months from the date of publication of this notification under the Chairman, State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) with



representatives from Department of Power, and one representative from the Department which deals with the subject of concerned agency with which dispute is made.

(5) The compliance audit for ash disposal by the thermal power plants and the user agency shall be conducted by auditors, authorised by Central Pollution Control Board (CPCB) and audit report shall be submitted to Central Pollution Control Board (CPCB) and concerned State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) by 30th November every year. Central Pollution Control Board (CPCB) and concerned State Pollution Control Board (SPCB) or Pollution Control Committee (PCC) shall initiate action against non-compliant thermal power plants within fifteen days of receipt of audit report."

Directions:

21. In the light of above discussion, it is patent that remedial measures are required in terms of recommendations set out in para 15 above in respect of individual TPPs or other projects as well as general issues applicable to all the TPPs such as timely installation of air pollution control and monitoring devices, timely utilisation and disposal of fly ash, scientific designing of fly ash dykes and safety norms, addressing public health issues, steps for restoration of deteriorated environment by bringing down CEPI scores in the entire area, restoration of Rihand Reservoir and other damaged/degraded areas, providing arrangement for public health facilities, including water supply and by coordinated and concerted efforts and high level monitoring. **The PP are to be accountable for past violations and are under obligation to remedy the violations and follow the norms for future. The regulators are to enforce the same and higher authorities are to oversee.** Accordingly, following direction are issued:

- i. We direct constitution of a fly ash management and utilization Mission to be jointly headed by the Secretaries, MoEF&CC, Coal and Power, GoI and Chief Secretaries of UP and MP. The Secretary, MoEF&CC will be the nodal agency for coordination and compliance. The Mission will coordinate and monitor issues relating to handling and disposal of flyash as well as all associated issues in the light of above discussion. It may hold its first meeting within one month to take stock of the situation and to prepare action plan in the light of recommendations of Joint Committees quoted earlier in para 15 above in respect of individual plants as well as road map generally. Thereafter, it may meet atleast once in a month for one year to review the progress. The resolutions of the Mission and quarterly progress may be placed on the website of MoEF&CC for information of the stake holders and inhabitants in the area. The Mission will be free to interact with the concerned Government Departments/ Expert institutions/ individuals/other stakeholders. The Mission may in its first meeting require voluntary financial



contribution by all the projects in proportion of the financial capacity of the projects out of CSR funds or otherwise. The contribution, alongwith compensation which may be collected may be credited to a separate environment restoration account for restoration of environment and relief to the victims of damage to the environment in such manner as may be found necessary by the Mission. Any victim or aggrieved party will be free to approach the Mission for providing such relief. The Mission may also consider the safeguards laid down in the Notification dated 31.12.2021, particularly for safety audits of the ash dykes which should be conducted particularly for structural stability, as far as possible within six months. Advisory issued by the Ministry of Power dated 22.9.2021 will not be enforced being against the spirit of notification dated 31.12.2021 and obstructing much needed speedy utilisation/disposal of legacy flyash. The Mission may evolve mechanism for interaction with stake holders, including associations of brick kiln owners. Guidelines be also issued for siting, design and engineering standards for the location, disposal, maintenance and regulation of Ash Ponds as breach of a fly ash ponds result in great disaster. Public health and risk impact assessment in the areas of operation of TPPs and generators of fly ash may be got conducted. **The Mission may also monitor scientific management and utilization of fly ash by power projects outside Singrauli and Sonebhadra, in coordination with Chief Secretaries of concerned States and adopting safety measures for ash dykes, installing devices to control air pollution, (including FGDs, OCEMS) in a time bound manner and restoration of environment and public health.** The Mission may also consider use of beneficiated coal. It may in particular consider on-site and off-site crisis management plans with regard to fly ash ponds and dykes. As noted earlier, legacy fly ash is 1670.602 Million Tonnes as on 31.12.2021 and data of ash generation and utilization of legacy fly ash is as follows:

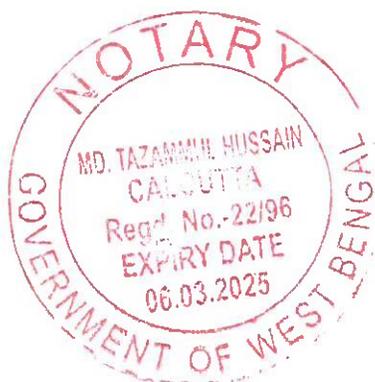
"Summary of Ash Generation and Utilization during year 2020-21

No. of Thermal Power Stations	: 191
Capacity (MW)	: 2,13,030 MW
Coal consumed	: 672.130 Million Tonnes
Fly Ash Generation	: 222.789 Million Tonnes
Fly Ash Utilization	: 205.098 Million Tonnes
Percentage Utilization	: 92.06%
Legacy flyash	:1670.602 Million Tonnes

The Committee of Secretaries, in coordination with PPs and statutory regulators, may draw a roadmap for utilization and disposal of entire legacy fly ash for Sonebhadra and Singrauli areas as well as for all the Power Plants located in clusters or standalone with tagging the sources to utilize fly ash on voluntary and compulsion mode for which required mechanism be laid down.



- ii. *With regard to past violations, the PPs remain liable and the Joint Committee of CPCB, State PCB and jurisdictional District Magistrates may determine compensation following due process, on the principles laid down inter alia in M.C. Mehta, (1987) 1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257, having regard to the period of violation and financial capacity of the unit. The PPs may take remedial measures as per recommendations of the Committee and as per law, failing with coercive measures for continuing or future violations be taken by concerned authorities.*
- iii. *Statutory regulators may take action in terms of need for compliances in the light of recommendations with regard to individual Plants as well as generally so as to require the concerned PPs to comply, failing which coercive measures be taken by the statutory regulators in accordance with law.*
- iv. *In respect of incident dated 10.04.2020, compensation paid to heirs of the deceased at the rate of Rs. 10 lakhs per death is increased to Rs. 15 lakhs on principles laid down inter alia in Sarla Verma (2009) 6 SCC 121 and Uphaar Cinema (2011) 14 SCC 481. We direct the remaining amount to be paid within one month. This order will not debar the heirs of the victims to claim higher compensation by approaching appropriate forum. If the salaries to persons appointed as compensation to the victims are below minimum wages, the PP may ensure compliance of law on the subject which may be also looked into by the concerned Labour Departments of the State of UP and MP. The statutory regulators may take further remedial action in terms of recommendations of the Committee in OA 148/2020, quoted earlier for restoration of environment and preventing such incidents.*
- v. *With regard to breach of Rihand Reservoir also, further remedial measures be taken in terms of recommendations on the subject, quoted in para 15 above."*
6. *Accordingly, the joint Committee as per para 7 above may consider the report of the District Magistrate as tentative and finalize the quantum of compensation based on nature and extent of violations and the financial capacity of the PP, within three months, after giving opportunity to the PP. The Committee may take assistance of such other individual/Expert as may be found necessary. The Committee may undertake visit to the site and interact with stakeholders. **Apart from assessment of compensation, the Committee may prepare an action plan with head-wise estimated cost of restoration of damage to the environment and facilities/compensation for the victims. Pending finalisation of the compensation amount, the Project Proponent may deposit interim compensation of Rs. 20 crores with District Magistrate, Bankura, which may be kept in a separate account to be utilized for execution of the restoration plan in the manner approved by the joint Committee, subject to any further order by this Tribunal.***
7. *An action taken report in the matter may be filed giving the progress report as on 31.08.2022 by 15.09.2022 by e-mail*



at judicial-nqt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

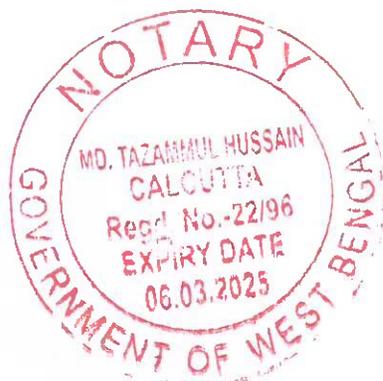
Consideration today and final order

4. In pursuance of above, WBPCB has filed affidavit dated 22.09.2022 to the effect that the joint Committee undertook visit to the site and identified preventive and remedial measures to be adopted for restoring the pond, preventing further discharge of ash laden water from ash pond to the canal and restoring the affected land. Compensation for the affected farmers has been assessed at Rs. 7,92,02,355/-, apart from Rs. 5.71 crores already disbursed earlier, while total compensation was assessed at Rs. 128,56,80,000/-. The conclusion in the joint Committee report annexed are as follows:-

“Conclusion

Based on the field visits, meeting with the stakeholders, and laboratory analysis of soil/water samples, following conclusions are made:

- i. *From the field visit and meeting held with stakeholder it is understood that there is ash-dyke breach since 2007. Based on the discussion held during the meeting, it was confirmed that the incidents of the ash dyke breach by DVC have happened many times previously. WBPCB has also observed ash pond overflow into the local drains/canal during their inspection dated 11.5.2021 and accordingly direction was issued by WBPCB. Therefore, the unit is liable to pay environmental compensation for its violation of the norms.*
- ii. *In the office memoranda on Environmental Clearance (dated September 14, 1995; February 10, 2004 and January 5, 2007) and the notification on Fly Ash Utilization issued by Ministry in September 1999 it was clearly mentioned that fly ash shall be used in phased manner to achieve 100% utilization within 9 years. However, M/s MTPS (DVC) failed to utilize 100% of the generated ash. Mismanagement of ash pond have resulted in reoccurrence of the incident. This may lead to runoff of the ash in the nearby agricultural lands during heavy rain or natural calamity.*
- iii. *The units have increased their electricity generation capacity from 630MW (3x210MW) to 2340MW leading to an increase in ash generation by 270% with respect to 1999.*



However, only 39.49% of dry fly ash is currently being utilized.

- iv. The ash-dyke breach has severely affected the agricultural land, canal water (Nityanandapur Canal), lake water (Nityanandapur lake), pond water in the nearby areas and needs to be restored. Purchase of farmer's land without restoration may not be considered.
- v. The effect of the ash-dyke breach was significantly visible even after one year of the incident during the field visit. Therefore, detailed study is required to be carried out for estimation of cost of restoration of damage.

The restoration plan may also be prepared by the expert agency and approved by the committee for further execution by the concerned department and DVC.

- vi. The gradual ash deposition in the Nityanandapur canal have resulted in reduction in the depth of the canal, hence the water holding capacity is also reduced, which may cause disastrous conditions like flood in the area.
- vii. Laboratory test reports of soil analysis indicate reduction in the concentration of various macro- and micro-nutrients of the soil, reflecting the absorption by the dumped fly ash. Reduction in nutrient concentration is supposed to affect the soil fertility in the long run.

7. Calculation of Environmental Compensation

The Environmental Compensation was calculated based on "Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" prepared by CPCB in compliance to Hon'ble NGT order dated 3/8/2018.

As per WBPCB, directions dated 20.04.2007, 20.06.2008, 7.11.2008 and 7.12.2021 indicated mismanagement of ash in the fly ash pond due to which the nearby areas are severely affected with air and water pollution from 2007 onward. However, in spite of repeated directions from the WBPCB, MTPS (DVC) have failed to comply with the norms since 2007.

As per the methodology, the Environmental Compensation shall be based on the following formula:

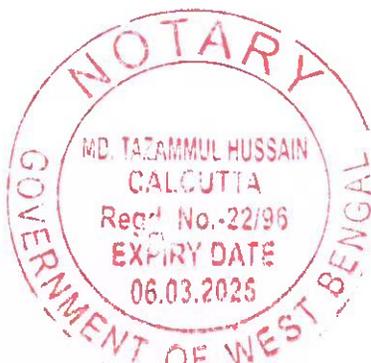
$$EC = PI \times N \times R \times S \times L F$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place



R = A factor in Rupees (₹) for EC

S = Factor for scale of operation LF = Location factor

MTPS (DVC) is a Thermal Power generating Industry, generate 2340 MW of electricity. According to the CPCB (Modified directions to SPCBS/PCCc on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories, dated 07.03.2016) Coal based Power Generating Industry falls under Red category and average PI for Red category industry is 80.

R considered as 250, as the Environmental Compensation in cases of violation of Environmental Regulation.

MTPS (DVC) is large based industry, so, S considered as 1.5.

LF , could be based on population of the city/town and location of the industrial unit. No, municipality or town is situated in the radius of 10Km, however some villages are present and the population is not more than 1million. So, LF considered as 1.

N , number of days for which violation took place is the duration between the day of violation observed. Here, N = 5357. N considered from calendar year of 1st January 2008 to 31st August 2022

$$EC = 80 \times 5357 \times 250 \times 1.5 \times 1$$

$$= 160710000/-$$

Approx. 16.1 crore only

However, in order to include deterrent effect for repeated violations of environmental regulations since 2007 due to ash-dyke breach and/or other similar activities like seepage, runoff etc., the EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions. Therefore, the calculated EC is multiplied by factor 8.

$$EC (Rs.) = 80 \times 5357 \times 250 \times 1.5 \times 1 \times 8$$

$$= 128,56,80,000$$

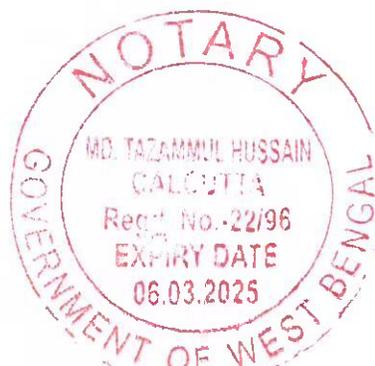
Therefore, MTPS (DVC) is required to pay an amount of Rs. 128,56,80,000/- (One twenty eight crore fifty six lakhs eighty thousands) as environmental compensation.

As per the Crop Compensation details, Rs. 14,45,74,190 has already been paid to the farmers by MTPS(DVC) (Table 3) which may be deducted from the cost of damage which may be assessed through the expert institute.

Table 4: Crop Compensation Amount Details from MTPS

SI. No.	Financial Year	Amount in Rs.
1.	2002-2012	3,38,41,611
2.	2012-2015	6,20,44,673
3.	2015-2018	3,12,47,118
4.	Additional amount paid (2007-2008)	1,74,40,788
	Total	14,45,74,190

Source: MTPS(DVC)



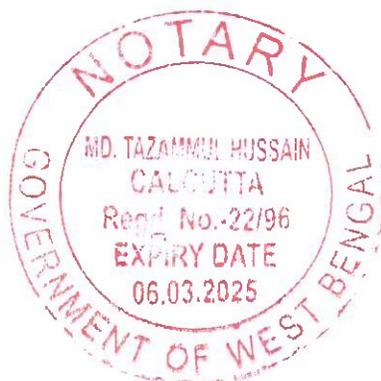
8. Recommendations

- i. *MTPS (DVC) should carry out immediate de-silting/dredging of the canal carrying ash pond water and arrange for removal of dredged material from the banks of the canal to the designated place for further disposal. Record of such activities including vehicle movement may be maintained.*
- ii. *Thereafter, dredging activity should be carried out on regular basis to maintain the appropriate depth of the canal.*
- iii. *Necessary steps maybe undertaken to stop the discharge of ash laden water from Ash-Pond into the canal. In the condition when discharge is unavoidable, ash containing water/seepage from ash-pond may be diverted to the Settling Pond for primary treatment in order to minimize the Total Suspended Solid (TSS).*

Based on the observations made during the field visit, for calculation of the cost of damage and restoration of affected land and formulation of action plan, it is proposed that expert institutes such as NEERI/NPTI/IITs etc. may be engaged for carrying out the detailed study taking into consideration that the incident occurred before one year. The cost of the study may be borne by MTPS (DVC).

- v. *Appropriate & immediate compensation for the owners of the affected agricultural lands/farmers becomes essential for their livelihood. Compensation calculated by the District Authority i.e., Rs.7,92,02,355/-may be provided to the affected farmers from the amount of Rs.20 Crores deposited by MTPS (DVC) with District Magistrate, Bankura as interim compensation.*
- vi. *The unit was found to be defaulter since 2007. Therefore, as per the evaluation methodology of calculating the Environmental Compensation for violation of norms may also be applicable in addition to the cost of damage caused and restoration to be calculated by the expert institutes. Therefore, an amount of Rs. 128,56,80,000/- may also be deposited to the appropriate authority as Environmental Compensation by MTPS (DVC)."*

5. An affidavit has also been filed by District Magistrate, Bankura to the effect that 431 farmers have been affected in area of 239 acres. Approximately, 1000 acres of land of 3699 farmers was buried under ashes due to over-flow of ashes from the ash pond. The PP released



amount of Rs. 5.71 crores and disbursed to 1431 beneficiaries for the years 2018-2019, 2019-2020, 2020-2021 in the month of June 2022. Further, compensation of Rs. 7,92,02,355/- needs to be paid due to flash flood of September 2021 in addition to the amount already paid. The details of affected person to whom the amount has to be paid is annexed as annexure to letter dated 26.07.2022 addressed to the District Magistrate, Bankura from Block Development Officer, Gangajalghati Development Block. The said contains two lists, one is a list of 2902 persons annexed to letter dated 26.07.2022 and the second list is of 799 persons annexed to letter dated 29.07.2022 i.e. total 3701.

6. The PP has filed objections to the report to the effect that the PP has proposed construction of third ash pond as the earlier two ash ponds were over-flowing for which permission of the MoEF&CC was granted on 19.11.2014. However, but since land was not available, the work could not commence. The PP took remedial measures for stabilization of ash pond in consultation with the experts. PP has denied contamination of drinking water sources. With regard to damage caused, the PP has submitted that there was cloud burst and heavy rain on 29.09.2021 which is responsible for damage to the agricultural fields. This being an act of God, the PP is not accountable. The PP has done dredging of the canal in coordination with the Irrigation Department and taken steps for achieving more than 100% fly ash in the last five years. Total 82% fly ash has been utilized in the last year. Fly ash is not hazardous industrial waste and can be raw material for cement factories, bricks and tiles and for filling of void mines, road constructions and stone quarries. Compensation liability assessed is excessive.

7. We have heard learned counsel for the parties and considered the rival submissions.



Finding and direction

8. It is patent from site visit report of the Committee constituted by this Tribunal that there was mismanagement of fly ash ponds resulting in overflow affecting the drains and canal in the area. It has resulting in reduction of water holding capacity of drains and canal and also in reduction of nutrients in soil. Only 34% of fly ash has been utilized. We do not find any reason to reject these factual observations of the joint Committee merely due to self serving denial of the PP when the circumstances corroborate violation of norms and damage. The PP has admitted that third pond was proposed in 2014 but has still not been constructed. PP has also admitted that damage to the lands has taken place but explained it as act of God. It is not the case of the PP that there is no fly ash stored and entire quantity of such fly ash stands duly disposed or is scientifically managed. Thus, the PP cannot avoid accountability for compensation on polluter pays principle. The amount of compensation has to be assessed in the light of principles laid down *inter alia* in *M. C. Mehta, (1987) 1 SCC 395, Sterlite (2013) 4 SCC 575* and *Goel Ganga (2018) 18 SCC 257*. The basis of calculation by the Committee is CPCB formulae of calculating compensation for each day of violation which formulae cannot be accepted as final. It does contemplate assessment of cost of remediation measures nor financial capacity. Further, while assessment of Rs. 16 cores may not be adequate, multiplying it by 8 times for deterrent element may not be justified.

9. Considering entirety of circumstances and not ruling out the practical fact that some element of guesswork is inevitable, we keep the issue of determining final compensation pending in the manner indicated in this order but uphold claim of Rs.7.92 crore for payment to the

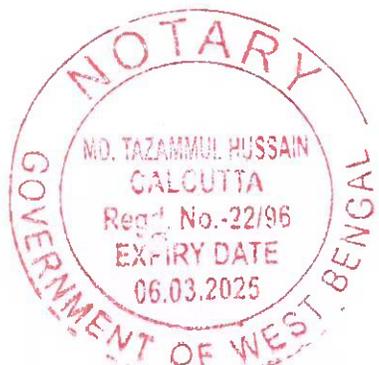


affected farmers. This will be over and above compensation paid in the past. This amount may accordingly be disbursed to the farmers by the District Magistrate by transfer to their bank accounts. Remaining amount of Rs.12.08 crores may be transferred by the District Magistrate, Bankura to the State PCB for restoration measures suggested by the Committee. A joint Committee of ACS, Environment, WB, Integrated Regional Office, MoEF&CC, Kolkata, Regional Director, CPCB, Kolkata, State PCB and District Magistrate, Bankura may meet within two weeks and after taking stock of earlier studies on the subject, update an action plan for restoration measure. It may also interact with the PP and any other stake holders. It may assess final cost of restoration measures. If available amount of Rs.12.08 crores is found deficient, the Committee may estimate how much more amount is required. If the amount is found to be sufficient, interim amount of compensation will be treated as final. In case of deficiency found, the PP may pay additional amount assessed by the Committee if it has no grievance but if aggrieved, it may move this Tribunal for finalizing the quantum. We reserve liberty to the PP to this extent. Execution of remedial measures to the extent of funds available may commence at the earliest. In executing the remedial measures, the PP or any other stakeholder may also be associated.

Subject to the above, the application will stand disposed of.

A copy of this order be forwarded to the ACS, Environment, Integrated Regional Office, MoEF&CC, Kolkata, Regional Director, CPCB, Kolkata, State PCB and District Magistrate, Bankura by email for compliance.

I.A No. 230/2022/EZ will also stand disposed of in above terms.



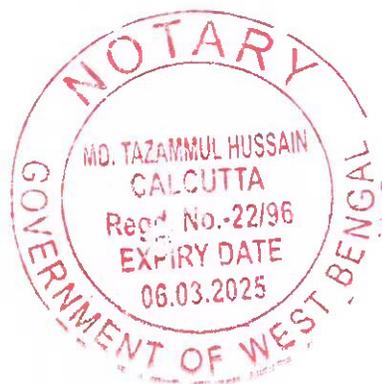
Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Prof. A. Senthil Vel, EM

February 14, 2023
Original Application No. 152/2017/EZ
I.A. No. 230/2022/EZ
AB





email : damodarheadworksdivision@gmail.com
☎ 0343-2555640

OFFICE OF THE EXECUTIVE ENGINEER
DAMODAR HEADWORKS DIVISION
IRRIGATION & WATERWAYS DIRECTORATE
GOVT. OF WEST BENGAL
D.V.C. NEW COLONY, DURGAPUR - 713202, DIST. - PASCHIM BARDHAMAN

Memo. 2128

Dated. 13/09/2018

To,

✓ Mr. Pravir Chand
DCE (C) & DGM (A)
DVC, MTPS

Sub: - Information in respect of land acquired for Nityanandapur Dam and Jamgari Dam reservoir.
Ref: - Your Memo. No. Mt/PH(C)/OPH/Land/200 dtd. 29.08.2018.

Sir,

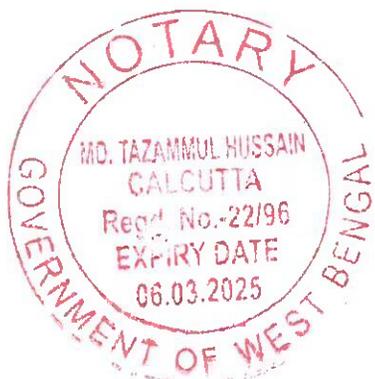
In reference to your memo cited above, I would like to inform you that the details of acquired Land as desired for construction of the reservoir of Nityanandapur Dam & Jamgari Dam as follows :-

Mouza - Sarangapur, J.L. No. - 26, P.S.- Gangajalghati, Dist.- Bankura, Plot Nos. of Land which are taken possession Full Plots :- 2286 to 2292, 2303 to 2441, 2443 to 2536, 2541 to 2611, 2668 to 2693, 2695 to 2743, 2745, 2747 to 2807, 2923 to 2936, 2938 to 2947, 2962 to 3055, 3057 to 3146, 3148, 3149, 3151, 3155 to 3250, 3334 to 3337, 3870 to 3874, 3876 to 3879, 3881 to 3920, 3922, 3941 to 3959, 4037, 4039 to 4052, 4061 to 4066, 4068 to 4083, 4090, 4092 to 4094, 4340, 4355, 4356, 4363, 4364, 4434, 4435, 4490 to 4610, 4614 to 4616, 4625 to 4627, 4639, 4642, 4666, 4667, 4671 to 4748, 4759 to 5001, 5004, 5005, 5015, 5307 to 5311, 5314 to 5319, 5324 to 5356, 5364, 5372 to 5394, 5398 to 5609, 5625 to 5630, 5660 to 5666, 5704 to 5714, 5715 to 6477, 6492, 6493, 6501, 6522 to 6524, 6527, 6535 to 6633, 6636, 6637, 6647, 6661, 6664 to 6776, 6860 to 6862, 6875, 6882, 6883, 6886 to 6894, 6896 to 6900, 6492/ 10930 to 6492/ 11015, 4453/ 11016, 4452/ 11017, 3125/11525, 4094/11528, 3870/11529, 4700/11533, 4814/11534, 6355/11535, 6252/11536, 6492/ 11538, 5422/ 11539, 5419/ 11540, 5419/11541, 5417/11542, 5417/11543, 3148/11555, 6296/11587, 6297/11020, 6726/11021, 4803/11030, 5348/11503, 5663/11504, 5717/11505, 5915/11515, 5870/11516, 2515/11517, 4899/11018, 5802/11019, 6296/ 11586.

Part Plots (2744 - N - 0.10), (3056 - N - 0.54), (3150 - N.E - 1.96 with area) (3863-N.E-0.38), (3865-N.E-0.015), (3875-N.E-0.85), (3880-N.E-0.20), (3921-N.E-2.42), (4067-N.E-0.20), (4237-M-0.07), (4354-N-0.32), (4479-M-0.74), (5397-S-0.16), (6638-N-0.005), (6648-N.W-0.08), (6881-E-0.03), (6885-E-0.01), (4259/11560 - 1.16), (2214/ 11659 - 0.95).

The total area of Land 278.57 Acres, Date, Possession 27.02.76, L.A Case No :- 138 of 75-76, Bankura, Vetting Certificate sent to L.A. Collector. Bankura vide this office no. 5113 dtd. 05.07.76, Sl. 242.

This has a reference as per the available records of this office.



Yours faithfully,

(A.K. Singh)

Executive Engineer,
Damodar Head Works Division,
Durgapur - 02

13/09/18



email : damodarheadworksdivision@gmail.com
☎ 0343-2555640

OFFICE OF THE EXECUTIVE ENGINEER
DAMODAR HEADWORKS DIVISION
IRRIGATION & WATERWAYS DIRECTORATE
GOVT. OF WEST BENGAL
D.V.C. NEW COLONY, DURGAPUR - 713202, DIST. - PASCHIM BARDHAMAN

Memo. 2236

Dated. 01/10/18

To
✓ Mr. Manoj Mondal,
Executive Engineer (C)
PHCD, O & M, MTPS

Sub: - Information in respect of Land acquired for Nityanandapur Dam and Jamgari Dam reservoir.
Ref: - Your letter through e-mail received dtd. 23.09.2018 at 11:10 A.M.

Sir,

In reference to your letter received through e-mail dtd. 23.09.2018, I would like to inform you that the details of acquired land as desired, for construction of the reservoirs of Nityanandapur Dam & Jamgari Dam as follows:-

(1) Mouza Bank Daha; J.L. No. 27, Sheet No. - 3

C.S. Plots in full : 858, -864, 866, 898, 902-914, 917-920, 855/3552-3553, 897/3554-3556, 860/3557, 826/3518-3563, 907/3608-3614, 907/3609, 907/3618, 908/3620, 914/3621-3627, 913/3628, 916/3639, 917/3658, 918/3659, 919/3690

C.S. Plots in part : 865, 900, 915, 916, 826/3516, 916/3638, 916/4134, 826, 829

Total Area : 40.65 Acres (Approx).

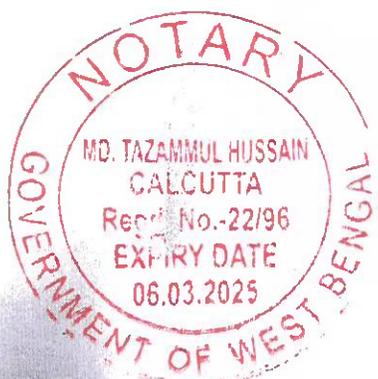
(2) Mouza - Latia Bani: J.L. NO. 30, sheet No. - 4

Full Plots : 1365, 1367, 1360, 1370, 1377, 1378, 1379-1381, 1383-1386, 1382, 1389-1403, 1405-1407, 1417, 1418, 1414, 1416, 1419-1425, 1426, 1427-1437, 1413/4220, 1439-1444, 1446, 1447, 1397/3467, 1438/3445, 1388/4262, 1397/4265, 1293/4239-4246, 1293/4247-4250, 1397/4264, 1397/4265, 1438/4278, 1438/4270, 1438/4280-4283, 1349/4349, 1293/4294, 1388/4289, 1388/4290, 1349/4350, 1349/4351-4353, 1293/4627, 1423/4268, 1423/4268, 1423/4269, 1437/4266, 1388/4368.

Part Plots: 1293, 1387, 1388, 1349, 1413, 1412, 1438, 1445, 1497, 1499, 1519, 1413/4221, 1438/3466, 1438/4284, 1438/4285, 1293/4257, 1438/4288, 1293/4291.

Total Area 96.52 Acres (Approx)

The information so depicted herein above as per the available records of this office.



Yours faithfully,

28/09/18
(A.K.Singh)

Executive Engineer,
Damodar Head Works Division,
Durgapur - 02

28/9/18



email : damodarheadworksddivision@gmail.com
☎ 0343-2555640

OFFICE OF THE EXECUTIVE ENGINEER
DAMODAR HEADWORKS DIVISION
IRRIGATION & WATERWAYS DIRECTORATE
GOVT. OF WEST BENGAL
D.V.C. NEW COLONY, DURGAPUR - 713202, DIST. - PASCHIM BARDHAMAN

Memo. 2475

Dated. 19/11/18

To,

✓ Mr. Pravir Chand
Deputy Chief Engineer (C)
DVC, MTPS

Sub: - Information regarding the land acquired for Upper and Lower Malfarajore in Gangajal Ghati Block in the District of Bankura.

Ref: - Your letter through e-mail received dtd. 03.10.2018 at 07.25 P.M.

Sir,

In reference to your letter received through e-mail dtd. 03.10.2018, I would like to inform your goodself that the details of acquired land as desired for construction of reservoirs of Nityanandapur Dam & Jamgari Dam as follows :-

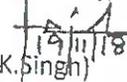
Mouza Subirara, J.L. No. 25 (Sheet No. 2)

- (1) C.S. Plots in full : 1982,1987-1994,1997-2008,2043,2045-2053,2055-2063,2110,2113-2115,2127-2129,2138,2154,2156-2166,2168-2186,2191,1847,2334-2336,2338-2341,2343-2346,2449,2450,3295,3301-3311,3319-3321,3306,3317-3320,2006/2350,2014/3351-352,2014/3387,2048/3486,2168/3353,1854/3539.
- (2) C.S. Plots in Part : 2054,2064,2065,2066,2090,2096,2109,2111,2112,2113,2130,2132,2321,2342,2360,2441,2442,2445,2446,2448,3312,3315,3318,3322,3329,3330

Total Area 39.75 Acres (Approx).

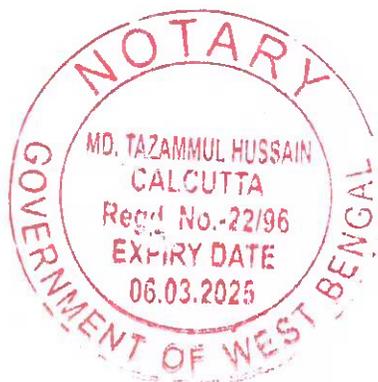
The information so depicted hereto as per the available records of this office.

Yours faithfully,


(A.K. Singh)

Executive Engineer,
Damodar Head Works Division,
Durgapur - 02







Corporate Office:
DVC Tower, VTP Rd.
Kolkata-700 054

दामोदर घाटी निगम
Damodar Valley Corporation

मेजिया ताप विद्युत केन्द्र

Mejia Thermal Power Station

संकेत :- मे.ता.थि.के. , जिला :- बंक्रुडा - 722183, पश्चिम बंगाल
P.O.:- MITPS, Dist:- Bankura-722183, West Bengal



[[ISO 9001:2015]]

MT/ Chief Engineer & HOP/08/3002

Date:12.12.2022

To
The District Magistrate
Bankura
PIN – 722101

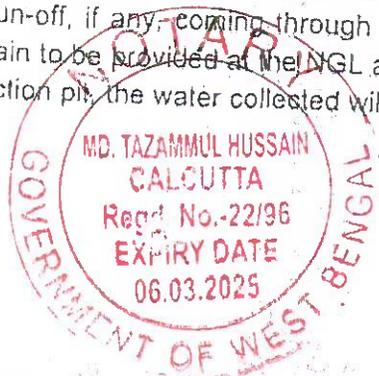
Sub: Report in connection with the removal of ashes from the Upper Dam and Lower Dam located at Jamgari and Delhol/ Sarangapur mouza respectively under Nityanandapur G.P including their connected channels.

Re: Your letter dated 02.12.2022

Madam,

With reference to the above subject, kindly find below the reply in seriatim:

1. At the outset, we say that the breach of ash dyke happened in September 2021 because of a natural calamity and was beyond the control of DVC. Thereafter, we immediately wrote to the district administration and irrigation department. MTPS authority have immediately taken steps upon receipt of instruction and guidance. The ash deposited over the silt of irrigation canal has been removed from irrigation canal (Right bank main canal {RBMC} & Left bank main canal {LBMC}). After excavation of ash, it was transported to the ash pond of Mejia Thermal Power Station for disposal. The office of the Irrigation & Waterways Directorate, Asansol vide its letter dated 05.12.2022 issued to you, has also confirmed the same. Copy attached.
2. Dams are very old and were constructed long time back even before the Mejia Thermal Power Plant was commissioned. Over these several years huge quantity of silt has been deposited in the said dams and channels. Due to breaching of ash dyke, ash was deposited over the silt. The deposited ash shall be removed in due course with the assistance and guidance of Irrigation & Waterways Dte and Local Administration. But we are not liable to dredge the silt deposited in the said two dams and channels over the years.
3. It is to be further informed that the work for strengthening, retrofitting, buttressing and further raising of ash dyke of MTPS is under tendering stage in which a collection pit has been considered for construction at the North-East corner of the ash pond area. Seepage water and other run-off, if any coming through the dyke embankment will be collected through the toe drain to be provided at the NGL and will be discharged into the collection pit. From the collection pit, the water collected will be diverted to the plant area.



4. With regard to the recommendation of the Joint Committee, it is submitted that DVC has not acted in any violation and as such not liable for any alleged compensation. DVC has taken steps to challenge the imposition of compensation by the Joint Committee and as such there is no question of any undertaking.

This is without prejudice to the rights and contentions of DVC that DVC has not violated any environmental norms and not liable for any cost and/or compensation.

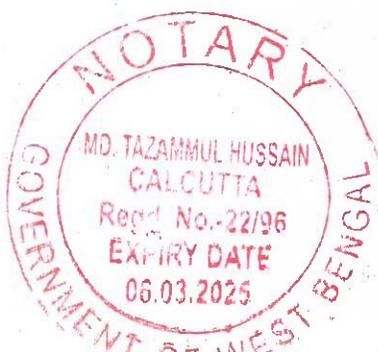
All our rights are reserved.

Yours faithfully,


 (SUDHIR KUMAR JHA) प्रमुख
 Chief Engineer & HOP Head
 दा.वा.नि. म.स.प्र.क. दुर्लपुर, बंकुरा
 DVC, MTPS, Durloypur, Bankura

Copy to:

- ✓ 1. The Chief Engineer(O&E), Paribesh Bhawan, 10A, Block LA, Sector-III, Salt Lake City, Kolkata - 700 091.
2. The Environmental Engineer, Durgapur Regional Office, WBPCB.
3. The CA to the Additional District Magistrate(General), Bankura.





Corporate Office:
DVC Towers, VIP Rd.
Kolkata-700 054

दामोदर घाटी निगम
Damodar Valley Corporation
मेजिया ताप विद्युत केन्द्र
Mejia Thermal Power Station

डाकघर :- मे ता घि के , जिला :- बांकुरा - 722183, पश्चिम बंगाल
P.O.: MTPS, Distr:- Bankura-722183, West Bengal



ISO 9001:2015

No.: MT/Chief Engineer & HOP/08/ 4250

Date: 04/06/2024

To
The Superintending Engineer
Damodar Irrigation Circle
Irrigation & Waterways Directorate
Govt. of West Bengal
Kanainatsal, Purba Bardhaman

Sub: Removal of deposited fly ash from Maliarajore Dam, P.S. Gangajalghati, Dist. Bankura

- Ref: 1. Your Memo No. 1026/1(2) dated 22.04.2024
2. The Chief Engineer (West), I&WD Memo to the Executive Director (Opn), DVC bearing No. 515-CI(W)/3W-01/23 dated 17.05.2024
3. The Chief Engineer (West), I&WD Memo to the Executive Director (Opn), DVC bearing No. 534-CI(W)/3W-01/23 dated 24.05.2024

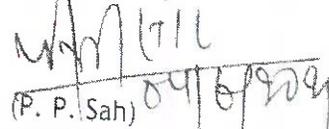
Dear Sir,

Reference above, this is to mention that the ash deposited over the silt has already been removed from the Irrigation Canal (Right Bank Main Canal i.e. RBMC & Left Bank Main Canal i.e. LBMC). The Office of the Irrigation & Waterways Directorate, Asansol vide Memo No. 401/1(3) dated 05.12.2022 has confirmed the same (copy enclosed).

Regarding deposition of fly ash in the 2 parts of Maliarajore Dam i.e. Jamgari & Nityanandapur Dam, it may be mentioned that the said dams are very old and were constructed long time back even before commissioning of MTPS. Over these several years, huge quantity of silt has been deposited in the said dams and channels.

In this regard, it may be mentioned that as per direction of Hon'ble NGT dated 14.02.2023, a Joint Committee comprising of ACS, Environment, WB, Integrated Regional Office, MoEF&CC, Kolkata, Regional Director, CPCB, Kolkata, State PCB and District Magistrate, Bankura has been constituted who will suggest an action plan for restoration measure including assessment of final cost towards the same. After receipt of the suggestion of the Joint Committee, appropriate action on the subject shall be taken up by DVC.

Yours faithfully,

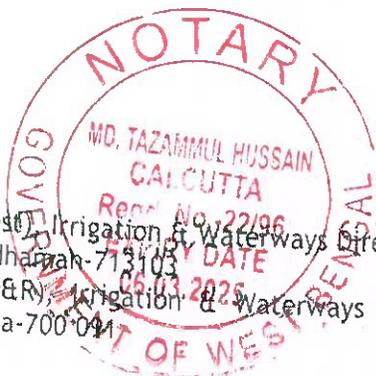

(P. P. Sah)

Senior General Manager & HOP
DVC, MTPS

Encl: As stated

Copy to:

1. The Chief Engineer (West), Irrigation & Waterways Directorate, Govt. of West Bengal, Kanainatsal, Purba Bardhaman-713103
2. The Chief Engineer (D&R), Irrigation & Waterways Directorate, Jalasampad Bhavan (1st floor), Salt Lake, Kolkata-700 091



Copy to (NOO):

1. The Executive Director (Operation), DVC, Kolkata
- ✓ 2. The Sr. General Manager (Civil), DVC, Kolkata

