

18/12/20

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Justice RajesKumar

Former Judge, Allahabad High Court
Former Chair Person DRAT, Kolkata
Chairman, Monitoring Committee, National Green Tribunal

Residence at:

3-C, Tashkand Marg,
Near St. Josephs College,
Opposite Shakuntala Hospital,
Allahabad-211001
Phone - 05322407805
Mob.No. 9415235009, 7388908877
E-mail: kumarjusticerajes@gmail.com

Date: 20.12.2019

To,

The Registrar,
Hon'ble National Green Tribunal,
Faridkot House, Copernicus Marg,
New Delhi – 110001

Subject: **In the Matter of OA no. 164 of 2018, earlier no.276 of 2013 (Ashwani Kumar Dubey vs. Union of India and Others)**

Please put up the enclosed minutes of meeting dated 17.12.2019 before the Hon'ble Chairman, NGT at an earliest.

Rajes Kumar
(Justice Rajes Kumar)
Chairman
Oversight Committee

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The Minutes of Meeting of Oversight Committee under the Chairmanship of Hon'ble Justice (Retd.) Shri Rajes Kumar, Allahabad High Court held on 17.12.2019 at 11:00 AM at Adm. Bldg., ED Conference Hall, NTPC-Vindhyachal in compliance of the Hon'ble NGT Order dated 28/08/2018 in O.A. No. 164 / 2018, Ashwani Kumar Dubey Vs. Union of India and others:

The attendance sheet of Committee Members and stake holders is enclosed.

Shri S.K. Gupta, Regional Director, CPPCB welcomed the members of the Oversight Committee, District Magistrate, Singrauli and all stake holders present in the meeting and with the permission of Chairman the meeting has started. Regional Director, CPPCB invited all stake holders to file their progress report in the compliance of the Core Committee final recommendations accepted by the Hon'ble NGT, New Delhi and directions given by Oversight Committee during earlier meetings and on dated 22.10.2019 at Circuit House, Prayagraj, Allahabad.

Thermal Power Plants:

NTPC-Singrauli: Shri Debasish Chattopadhyay, CGM (S) submitted status report. The status report shall be examined by the Committee subsequently.

NTPC-Vindhyachal: In pursuance the details asked by the Committee they have submitted the status report (Status report shall be examined by the Committee subsequently). Mr. D. Sen, ED (V) informs that till now the Company have achieved about 28% disposal of the current fly ash generation. They are trying their best to get more abandoned stone quarries and low lying areas from the administration to increase disposal. On the query being made that what steps have been taken to fill the abandoned Gorbi mines, in pursuance of the MOU signed between NTPC and NCL, Mr. Sen stated that the permission for filling fly ash has been applied with the MPPCB. MPPCB vide letter dated 29.11.2019 granted in-principle permission subject to fulfilment of certain conditions. Mr. Sen submitted that some of the conditions will be fulfilled by December 2019, and some of the conditions namely Environment impact assessment from CMPDI will take a long time and maybe completed by October 2020 as Hydro Geology study involves Pre-Monsoon & Post Monsoon

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testing after installation of Piezo Meter. He further submitted that the district magistrate is likely to provide some more abandoned stone quarries and low lying areas to fill fly ash. Filling in 01 abandoned Stone Quarry is likely to start by end of December 2019. It is further stated that some abandoned quarry and low lying area have already been provided where they have started filling.

The committee has visited on the information being received that there is a breach of fly ash dyke on 06.10.2019, the committee visited this spot on 16.12.2019. The committee found a huge breach of dyke No.V1. On the spot inspection it was found that huge quantity of fly ash have been drained from the Dyke, polluting water of Rihand Reservoir. We found that still sufficient quantity of water along with ash is going on to the Rihand Reservoir. Shri Sen submitted that the restoration of the ash dyke V1 will take at least 8 months and may be completed by August 2020. He further submitted that as far as the stability of the dyke is concerned, they have obtained stability report from IIT, Roorkee where in they have approved the stability of all Dykes of NTPC-Vindhyachal. Further the cause of the breach is under assessment and according to Mr Sen, it may likely be assessed by December 2019 by IIT, Roorkee. Mr Sen has admitted that it is true that when the dyke was breached, a huge quantity of water along with fly ash had been drained out of the Dyke. At the time of breach whatever quantity of water along with fly ash was drained from the dyke was spread out on NTPC land including overflow lagoon of AWRS pump house. Subsequent breaching of One portion of OFL also resulted in some fly ash flowing into the reservoir along with water. Mr. Sen submitted that the plant will take up the dredging of the affected area of Rihand Reservoir to remove the ash that has flown into the Reservoir.

On being asked about the real status, the Regional Officer of MPPCB, Mr Balmiki, Singrauli who made the spot inspection on the next day of breach, stated that due to the breach of V1 dyke of NTPC Vindhyachal a huge quantity of water along with ash was drained and spread on NTPC land including the overflow lagoon of AWRS pump house, and had flown to Rihand Reservoir after the breach of OFL. He stated that huge quantity of ashes had gone to Rihand reservoir polluting the water of the Reservoir.

Prima facie, the committee is of the view that huge quantity of fly ash travelled to Rihand Reservoir following the dyke breach. However, the

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assessment of exact quantity of fly ash travelled to Rihand Reservoir requires expert assessment. It is to be made by the competent authority including MPPCB. It will be open to the plant to get the assessment from their expert. Shri H.K Sharma director MPPCB states that on the information being received about the breach of ash dyke, the authorities of MPPCB visited the site along with authority of CPPCB on dated 9th and 10th October 2019 and they have prepared the report wherein they have also made a tentative assessment of ash slurry discharged. He further submitted that on the basis of the report, a sum of Rs. 10.00 Crore have been demanded from the plant towards the interim environmental compensation, out of which a sum of Rs 1.00 Crore bank guarantee has been submitted.

On a query Mr. Sen submitted that they are raising height of the dyke. On further query being made whether they have sought any permission from the MPPCB and submitted the drawing, he submitted that no permission has been sought. The committee is of the view that before raising the height of the dyke, as it has direct connection / impact over the sustainability of the ash dyke, the proposed design requires approval by the SPPCB and the permission from SPPCB is mandatory in this regard. It is shocking to know that the Regional Officer of SPPCB visited in the area, although aware that the work is going on to increase the height of the ash dyke, no action has been taken by them against the plant; This shows the non-sincerity of the officers and they have to be more careful in future.

On the spot inspection, the Committee found that a large portion of Ash Dyke had been breached with the result huge quantity of fly ash had spread all over the land. It has travelled up to the Rihand reservoir. Prima facie, the interim environmental compensation demanded by the MPPCB at Rs. 10.00 Crore cannot be said to be excessive. The said amount ought to be deposited. We are of the view that the furnishing of bank guarantee of Rs. 1.00 Crore is not sufficient. MPPCB may issue the notice asking the Plant to deposit the entire Rs. 10.00 Crore. Bank guarantee cannot be said to be deposit, it can only be treated as the security.

The committee is of the view that to strengthen the ash dyke the plant should consider to develop RCC wall around the fly ash dyke. The structure should be of RCC having a layer of PVC, tiles to ensure the stability of the dyke.

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At present the dyke is being made out of the fly ash putting boulder pitching outside wall and brick lining inside the dyke. The storage of fly ash is very important aspect in the context of Environment. Improper storage of fly ash results in air pollution and water pollution affecting the Environment. In the last meeting we have asked the thermal power plants to explore the possibility of developing the fly ash mount as has been developed by NTPC Dadri. Neither any interest has been shown in this regard nor any step has been taken to develop the fly ash mount. In the face of status stated above, we direct NTPC-Vindhyachal to be very sincere and implement the directions given by the committee and by the Hon'ble NGT in a shorter time.

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

UPVUN, Anpara:

On the information being received from the various sector that there is a continuous flow of the water carrying fly ash from two sides towards Rihand Reservoir since last more than one year. On 15.12.2019 night at about 6:30 PM committee visited the spot and found that the information given is true. There is continuous flow of water coming from plant along with the fly ash filling in Rihand Reservoir. On a query being made that why this is happening, Shri Pradhul Gupta, Senior Engineer states that this flow is not continuous, it is mainly during the rainy season and this happened because of fulfilment of the ash dyke therefore the water is overflowing. It also carries catchment water. It is stated that they are raising the height of the dyke which may likely to take one year at least. He further submitted that they are also developing another compartment which may likely to take six months and they are also making effort to divert the nala which carries natural water to reduce the quantity of water.

We do not find explanation satisfactory. The fact is that the water carrying fly ash are continuously flowing towards the Rihand Reservoir, the volume of the flowing water is very high and it carries fly ash, it is continuous since last more than one year. Discharge of fly ash to the Rihand Reservoir pollutes the water of reservoir which is the only source of water of the area. We find that the information about the flow of huge water along with fly ash

650

had not been conveyed to SPCB authorities and they have deliberately concealed the facts. It is mentioned here that these two areas are in a very interior and we have to reach these places after travelling about 18 KM kaccha road through forest. Act of pollution amounts to violation of various laws and polluter is liable to be punished. The committee is of the view that since the flow of water along with fly ash is continuous, and there is no possibility for its immediate stoppage. The only way to stop the flow is to close operation of the unit and their unit is liable to be closed until they make arrangements and ensure that no water with ashes may go to the Rihand Reservoir. The committee is also of the view that they are liable for the environment compensation as well as cost of desilting of the ashes from the reservoir on the principle of polluter pay. The UPPCB is directed to assess environmental compensation and take all stringent actions under the provision provided in the various Acts.

After the meeting, Shri H.P. Singh, Chief Engineer came with the request, in writing, which reads as follows:

कार्यालय
मुख्य अभियन्ता (स्तर)
उ०प्र० राज्य विद्युत उत्पादन निगम लि०
अनपरा तापीय परियोजना
अनपरा-सोनभद्र ।

CIN: U40101UP1980SGC005065

पत्रांक-797 / मु०अभि०(स्तर-1) / अताप / कैम्प

दिनांक: 17.12.2019

सेवा में,

मा० अध्यक्ष महोदय,
ओवर साइट कमेटी (सिंगरौली-सोनभद्र)
प्रयागराज-उ०प्र० ।

विषय: अनपरा तापीय परियोजना के राख बांध से रिहन्द जलाशय में जल उत्प्रवाह को पूर्णतः रोकने की प्रतिबद्धता के सम्बन्ध में ।

आदरणीय महोदय,

Handwritten signature

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एन0जी0टी0 द्वारा गठित ओवर साइट कमेटी द्वारा दिनांक 15.12.2019 को अनपरा तापीय परियोजना के राख बांध पर किये गए निरीक्षण एवं माननीय न्यायमूर्ति की अध्यक्षता में दिनांक 17.12.2019 को एन0टी0पी0सी0, विन्ध्यनगर के प्रशासनिक भवन सभागार में सम्पन्न बैठक के सन्दर्भ में कृपया अवगत हों कि अनपरा तापीय परियोजना द्वारा राख बांध से उत्सर्जित जल को रिहन्द जलाशय में प्रवाहित होने से पूर्णतः रोकने का कार्य अग्रेतर प्रगति पर हो, जिसे आगामी तीन माह में अवश्य पूर्ण करा लिया जायेगा।

उ0प्र0रा0वि0उ0नि0लि0 की अनपरा तापीय परियोजना, अनपरा, सोनभद्र की ओर से यह Commitment दिया जाता है कि आगामी तीन माह में रिहन्द जलाशय में राख बांध से उत्सर्जित सभी प्रकार के प्रवाह को रोक दिया जायेगा। अनपरा तापीय परियोजना पर्यावरणीय मानकों को पूर्ण करने के लिए प्रतिबद्ध है।

अतः आपसे निवेदन है कि अनपरा तापीय परियोजना को आगामी तीन माह की अनुमति प्रदान करने की कृपा करें। आपकी अति कृपा होगी।

आदर सहित सधन्यवाद।

भवदीय
(एच0पी0 सिंह)
मुख्य अभियन्ता
(सतर-1)

प्रतिलिपि:-

निदेशक (तकनीकी) उ0प्र0रा0वि0उ0नि0लि0, 8वां तल, शक्ति भवन विस्तार, लखनऊ।

We have considered the request. We are of the view that let the matter be referred to the Hon'ble NGT to take a final decision in the matter, on the facts and circumstances. UPPCB is also directed to issue the notice to the plant and take the appropriate action in accordance with the law.

LANCO:

The LANCO stated that they have taken ash dyke on lease from the UPVUN and paying an amount of Rs 7.2 Crore per annum. The representative, Shri Sandeep Goswami, E.D. stated that for the fault of UPVUN they may not be punished and they may be allowed to continue the production. We have heard the submission. There is a common ash dyke of UPVUN and LANCO.

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LANCO is flowing its ashes and water generated in their plant in the ash dyke of UPVUN. If LANCO will be allowed to continue production and allowed to flow water with fly ash, problem will not be solved, as their water and fly ash will continue to drain in the Rihand Reservoir because they have no separate fly ash dyke. Therefore, we propose to shut down the plant for the time being. However, if they are aggrieved with the action of UPVUN, it will be upon for them to take necessary action under civil and criminal law against UPVUN. Their production shall be dependent on the production of UPVUN and whenever their production shall be allowed LANCO production shall also be allowed unless LANCO may make any other arrangement.

ESSAR:

Shri Sukandho Sanyal, GM presented status report, same may be placed on record and may be examined subsequently. There was a breach of fly ash dyke on 07.08.2019. After the breach the committee made inspection and submitted report as stated in the earlier meetings dated ____ . Committee has visited the site on 16.12.2019 where the fly ash dyke was breached. We found that the entire fly ash which had travelled on the ground have been removed and reclaimed in the dyke which was declared abandoned and breached. We have been told that in future they have no plan to revive the said dyke and it has been declared as an abandoned dyke. In future, they have plan to develop the green area/plantation. Committee finds that their effort is satisfactory. As far as the other dykes are concerned, we have suggested that some substantive and stability arrangements should be made around the dyke namely to build concrete cemented wall etc., and to develop fly ash mount which will consume sufficient quantity of fly ash, as has been created by NTPC Dadri. We direct the plant to submit their plan and seek permission from the SPCB before raising the height of existing fly ash dyke. They have engaged IIT, Roorkee for stability report the same may likely to be received in a month.

NTPC-Rihand:

They have submitted the status report and submitted that the total fly ash utilization is 41% and their target is 51% to outside. Their none of dykes had yet been filled, one of their dykes may likely to be filled after 01 year.

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The Plant is directed that whenever they raise their dyke they may seek permission from the SPCB. The Committee also suggests the plant to explore possibility of developing the ash mount with full greenery / plantation, as has been created by NTPC Dadri.

M.B.Power (M.P.) Limited:

Shri Bholu Prasad Kushuwaha, Manager (Env.) filed the status report. He stated that they have taken the permission from MPPCB for creating the Fly Ash mount but the work has yet not been started because their outer utilization has been substantially increased and the surplus fly ash is not available. However, whenever the surplus fly ash will be available they will develop the fly ash mount as per need.

Hindalco Industries (Mahan) and SASAN (Reliance) & J.P. Nigri STPP:

The stability Certificate from IIT, Roorkee and status report have been submitted. Same may be considered.

OBRA (UPSEB):

Status report filed. They stated that they have engaged IIT, Roorkee for getting report of stability which may likely to receive within one month. It is stated that they are raising the height of the dyke but admittedly not taken permission from the UPPCB. Let the plant may submit the drawing and seek permission from the UPPCB for raising height of dyke. If any such application may be received, the UPPCB may consider and dispose of the same within two weeks.

RENUSAGAR POWER:

They submitted their status report along with the stability report obtained from IIT BHU. They stated that fly ash disposal to outside is about 90% however, they are trying to explore the possibility of utilisation of balance 10%.

COAL TRANSPORTATION BY ROAD:

In the earlier meeting dated 9.9.2019 the committee has directed the transporter to transport coal by covering the vehicle by iron sheet to reduce the possibility of overloading and spillage. Against this direction, it appears

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that Hindalco Industries and Dala cement factory moved applications before the Hon'ble Supreme Court in C.A.No.- 4251 - 4252/2019. The Hon'ble Supreme Court vide order dated 08.11.2019 directed the Oversight Committee to hear the Hindalco and other stake holders within 4 weeks and submit report in a sealed cover within period of eight weeks from the date of hearing. In pursuance thereof, the Committee has issued notices to all the stake holders and called them in a meeting dated 25.11.2019. Several stake holders attended the meeting and minutes has been drawn. Today also we have heard all the stake holders present today although the meeting had been called for on various other issues but since all the stake holders are present, we have discussed this issue in this meeting also. Hindalco and other stake holders are heard.

The authority of the NCL states that for loading of coal, the vehicles are provided by the purchaser of the coal. After the loading and the weighing, the purchasers/transporters use to cover the vehicle. Normally, the transporter is covering the vehicle by polythene sheets. He submitted that the entire responsibility of covering the loaded coal is upon the transporter. Shri S.K Gupta, Staff Officer, Jinguradha Mines submitted that there is a possibility of covering the coal by metal sheet. He further submitted that in case if the metal sheet is put over the coal, it 100% overrules the possibility of overloading at any stage, pilferage, spillage and theft. It is in the interest of the purchaser and the transporter also. He submitted that at the end of the NCL, there is no overloading. The overloading only takes place after the departure from the NCL in transit by the transporter by transferring the coal of one vehicle in 2 or 3 vehicles filled with coal to save cost of transportation. He submitted that undoubtedly in case of coverage by the polythene or any cloth, fool proof 100% coverage is not possible. It will lead to a pilferage and spillage which, of course, on the fall of some coal on the road after it is crushed by the following trucks, becoming powder may lead to air pollution. He submitted that the coverage of the vehicle by iron sheet/metal sheet may be possible by little modification in the vehicle. He has produced a pen drive and exhibited a video wherein by mechanical process the truck was fully covered by sheet. The video has been displayed before all the stake holders, including representatives of Hindalo Industries, Dala Cement, other stake holders, members of the transporters' association present here. He suggested that the

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sheet can be put in the form of rolling shutter or in other metallic sheet which can be conveniently rolled.

Since the matter is subjudice before the Hon'ble Supreme Court, we do not want to deal this matter at length at this stage. However, we expect the stake holders to make such arrangement within a period of two months to transport the coal by covering the vehicle by metal sheet or by any other sheet to avoid overloading, pilferage, spillage etc.

The committee has visited the site of loading of NCL on 16.12.2019. Committee found loading of one half dala truck. The said half dala truck was loaded beyond its side dala forming a pyramid of coal. On the query, Shri S.K Gupta, Staff Officer told that this happened because the vehicle was entitled to transport the coal of its specified quantity/weight and because of the short height of the dala (half dala) the loading was above the half dala. He agreed that in such a situation, pilferage, spillage cannot be avoided. On our objection to such loading, he assured that in future they will not allow coal loading of half dala.

NCL:

The committee requested the officials of NCL in the earlier meeting to allow disposal of fly ash in their over burden. The view of the NCL is that without examination of necessary parameters, at the moment they cannot allow the use of fly ash. The official of NCL states that the matter is pending before Niti Ayog New Delhi. Let the Thermal Power Plants as well as NCL may approach the concerned department of the Central Government who is considering this aspect of matter for expeditious decision.

Mr. H.K. Sharma, Dir. (MPPCB) states that there is a guidelines of CPPCB wherein it is stated that 25% of the Fly Ash must be utilise in the overburden created by NCL. He has not produced the guidelines before the Committee. The Committee is of the view that at this stage this issue cannot be considered in the absence of guidelines. The Committee may take this issue in next meeting.

656

Social worker, Shri Pankaj Mishra expressed his concern about the four lane road which is going to be constructed from Shaktinagar to Aurimore. He has submitted that the tender for the road reveals that it is of bitumen which may not be able to sustain the load of vehicle filled with material. He submitted that on this road normally the weight of the vehicles along with the material are more than 40 Tonne. Therefore, the road should be of RCC / concrete. He further states that there is no provision of any pavement and service link. Shri Umesh Singh, Asst. Engr., PWD states that though the road will be of bitumen, but as per drawing it will be capable to bear desire load. He further submitted that there is pavement in both the sides. He states that in the market area (Aurimore market) service lane will be provided and for other place there is no need. Since budget has already been released and tender has been approved this Committee cannot change the nature of the tender. However it is expected from the PWD to construct the road strictly as per the norms and as per the conditions of the tender. It is made clear that if construction of the road will not be found in accordance to the norms, stringent action will be taken against the contractor as well as the authority of PWD who will be responsible for the road construction. Shri Pankaj Mishra states that in the internal transportation of coal inside the collieries, vehicle should be covered by metal sheet because they are also creating air pollution. Shri S.K Gumasta, G.M., Nigahi states that it is not possible to do so. However we request the NCL to reconsider his plea and give a reply in this regard.

It is informed that despite foundation stone had been laid down by Hon'ble Chief Minister of UP and the agreement has been entered into between the parties, the work has not yet been started by the PWD. The official of the PWD states that some work has been started and they are going to execute the work in full speed and may complete within scheduled period. It is informed that for delay in execution of the contract the District Magistrate has levied heavy penalty of Rs 50.00 Lakh. Let the contractor may execute the work expeditiously.

Rajee Kumar
(Justice Rajee Kumar)

Chairman

Oversight Committee, NGT New Delhi