

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
Principal Bench
Original Application No.862 OF 2022**

In the matter of

Pankaj Kumar Mishra

Applicant

Vs.

Union of India & Ors.

Respondents

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**Nazimuddin
Scientist 'F'**

**Central Pollution Control Board
Delhi-110032**

Place: Delhi

Dated: 10.10.2023

Status of compliance of recommendation for environmental compensation for past violations
(In compliance of Para 12 of order dated 10.05.2023 in O.A. 862 of 2022)

1. Order dt. 10.05.2023 in O.A. 862 of 2022 read with order dt. 18.01.2022 in O.A. 164 of 2018

Hon'ble National Green Tribunal, Principal Bench has directed by order dated 10.05.2023 in Original Application No. 862 of 2022 Pankaj Kumar Mishra Vs Union of India & Ors, as under:

“12. ... CPCB may give information with regard to action taken for past violations in terms of direction (ii) above”

The referred direction in **Para 21 (ii)** of order dated 18.01.2022 of Hon'ble National Green Tribunal, Principal Bench in Original Application No. 164 of 2018 Ashwani Kumar Dubey Vs Union of India & Ors read with **Para 17** of the said order, are quoted below:

“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.”

and

“21. ...

i. ...

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.”

The past violation for various projects along with recommendations for environmental compensation amount referred above are mentioned in **Para 15** of order dated 18.01.2022 of Hon'ble National Green Tribunal, Principal Bench in Original Application No. 164 of 2018 Ashwani Kumar Dubey Vs Union of India & Ors

2. Status

CPCB requested the eight industries referred in Para 15 of order dated 18.01.2022 in OA 164 of 2018 to provided status of action taken on observations of Oversight Committee and environmental compensation. The status reported to CPCB by industries is as under:

S. No.	Industry	EC amount in Para 15 of order	Status informed by the industry
1	M/s NTPC Limited Shakti Nagar (Singrauli Power Plant)	Rs. 27,60,000	PP has informed that appeal has been filed against NGT-PB order (disposed of by Hon'ble Supreme Court order dated 05.07.2023)
2.	M/s Anpara Thermal Power Plant (Power Plant)	Rs.1,36,80,000	PP has informed that appeal was filed against NGT-PB order which has been disposed of (disposed of by Hon'ble Supreme Court order dated 05.07.2023)
3	M/s Renuagar Thermal Power Plant	Rs. 27,60,000	PP has informed that appeal has been filed against NGT-PB order
4	M/s Obra Thermal Power Station (Power Plant)	Rs.1,36,80,000	PP has informed that appeal was filed against NGT-PB order which has been disposed of (disposed of by Hon'ble Supreme Court order dated 05.07.2023)
5	M/s Northern Coalfields Limited – Dudhichuwa Project	Rs.1,36,80,000	NCL has informed that appeals were filed in Hon'ble Supreme Court against Hon'ble NGT-PB order in Singrauli Power Plant matter and the order has been set aside
6	M/s Northern Coalfields Limited – Kakri Project	Rs. 27,60,000	
7	M/s Northern Coalfields Limited – Khadia Project	Rs. 27,60,000	
8	M/s Hindalco Industries Limited – Aluminium Smelter	Rs.1,36,80,000	PP has informed that appeal was filed against NGT-PB order which has been disposed of (disposed of by Hon'ble Supreme Court order dated 05.07.2023)

Copy of the Judgment dated 05.07.2023 passed by Hon'ble Supreme Court of India in four appeals is enclosed.



2023 INSC 618

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3856/2022

SINGRAULI SUPER THERMAL POWER STATION

APPELLANT(S)

VERSUS

ASHWANI KUMAR DUBEY & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL No.4529/2022

CIVIL APPEAL No.4525/2022

CIVIL APPEAL No.4581/2022

J U D G M E N T

NAGARATHNA J.

Since the grievances ventilated by the appellant(s) in these appeals are common, they have been clubbed and heard together and are disposed of by this common judgment.

2. The appellants(s) herein are aggrieved by the order passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "NGT" for the sake of convenience) dated 18.01.2022. By the said order the following directions have been issued against the appellant(s) herein:-

"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 devises, timely utilization 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

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RADHA SHARMA
Date: 2023.07.12
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Reason: []

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 sh 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 pond 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 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 road map 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 sec 395, Sterlite (2013) 4 sec 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 Uphar 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.

All the matters (including IAs) will stand disposed of accordingly. If any grievance survives, aggrieved parties are free to take remedies as per law.

A copy of this order be forwarded to the Secretaries, MoEF&CC, Coal and Power, GoI and Chief Secretaries of UP and MP, CPCB, State PCBs, SEIAAs, PCCFs (HoFF) UP and MP, District Magistrates, Singrauli and Sonebhadra, Labour Commissioners, UP and MP, State Disaster Management Authorities of UP and MP and SSPs by e-mail for compliance. CPCB may also circulate the same by email to all TPPs or other concerned to facilitate compliance.

Adarsh Kumar Goel, CP

Sudhkr Agarwal, JM

Brijesh Sethi, JM

Prof. A. Senthil Ve!, EM

Dr. Afroz Ahmad, EM

January 18, 2022

3. Being aggrieved by the directions issued by the NGT and the manner in which the original petition has been disposed of, the appellants have filed these appeals.

4. At this stage itself it may be noted that the first respondent, the original applicant before the NGT has been served in all the cases and has not appeared in these cases. In the circumstances, the appeals have been heard and decided, by taking into consideration, the submissions of the learned counsel appearing for the appellants herein.

5. Learned Solicitor General appearing for the appellants in C.A. No.3856/2022 at the outset submitted that the proceedings of the NGT are judicial proceedings and compliance of principles of natural justice is a hallmark of all judicial proceedings. That in the instant case, while the NGT was well within its powers to constitute an expert Committee and to seek a report with regard to the alleged violations complained of by the first respondent herein, on receipt of the said report, it was necessary that the alleged violators were given an opportunity to object to the said report and after consideration of the objections, the NGT ought to have passed a considered order and issued only those directions which were appropriate having regard to the facts of each industry that was made a respondent before the NGT.

He further submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as the "Act" for the sake of convenience) categorically states that the Tribunal, though not bound by the procedure laid down by the Code of Civil Procedure, 1908, shall nevertheless be guided by the principles of natural

justice.

According to learned Solicitor General in the instant case, there has been gross violation of the principles of national justice on two counts: firstly, the report of the Committee constituted by the NGT and the recommendations made by the said Committee could not be objected to by the appellant(s) herein as there was hardly any time given to the appellants to even peruse the same. In this regard, he drew our attention to the fact that the report and the recommendations of the Committee constituted by the NGT were put up on the website of the NGT on 15.01.2022 and three days thereafter i.e., on 18.01.2022 the impugned directions have been issued. Secondly, he submitted that the fact that in such a short span of time the matters were considered and disposed of by the NGT, in the absence of there being objections filed by the appellants herein nor having heard the appellants herein, would also imply that there has been no consideration by the NGT of the *pros* and *cons* vis-a-vis the recommendations made by the expert Committee and as to whether the directions issued were appropriate to the case of each of the appellant(s) herein or not.

It was submitted that had the appellants herein had an opportunity of filing their objections to the recommendations made by the Committee constituted by the NGT and had the appellants been heard in the matter, possibly appropriate directions could have been issued as against the appellant(s) herein.

In conclusion, learned Solicitor General submitted that the impugned order may be set aside and the matter may be remanded to the NGT for re-consideration of the entire case of the first

respondent herein in compliance with the principles of natural 1007
justice, that is, firstly by giving an opportunity to the appellants
herein to file their objections, if any, to the recommendations of
the Committee constituted by the NGT and secondly, by giving a further
opportunity of hearing to the appellants herein.

In this regard, learned Solicitor General relied upon a
decision of this Court in Sanghar Zuber Ismail vs. Ministry of
Environment, Forest and Climate Change and Another reported in (2021)
SCC Online SC 669.

6. Learned senior counsel Mr. Sanjay Jain and Mr. Nazki adopted
the submissions of learned Solicitor General and also contended that
the manner in which the original petition has been disposed of by
the NGT in these cases was in gross violation of the principles of
natural justice. In this regard, reliance is also placed on another
decision of this Court in case of Kantha Vibhag Yuva Koli Samaj
Parivartan vs. State of Gujarat reported in 2022 SCC online SC 120.

7. The other learned counsel who have appeared, brought to our
notice that in the instant case, there were two reports filed and
therefore, it was all the more necessary that the said reports had
to be considered in order to examine as to whether there were
contradictions in them and were in accordance with law.

8. Learned ASG appearing for the respondent No.2 as well as
other learned counsel for private respondents also supported the
arguments of learned Solicitor General.

9. We find substance in the submissions made by learned
Solicitor General, learned senior counsel and learned counsel for
the respective parties.

As already noted, the first respondent is the contesting respondent herein who has been served and has failed to appear in these cases.

10. The directions issued by the NGT have been extracted above. The aforesaid directions are in light of the recommendations made by the expert Committee vide two reports submitted to the NGT. It is noted that the NGT has extracted the report/s as well as the recommendations at paragraphs 14-16 of the impugned order and has observed as under:

"14. Points for determination are remedial action against pollution due to failure to scientifically manage and utilise the flyash, accountability for damage due to breach of Rihand reservoir and due to breach of ash pond, resulting in deaths and injuries and damage to the crops and environment. As already mentioned, legacy fly ash is 1670.602 Million Tonnes as on 31.12.2021 which has potential for serious damage to the environment as shown by incidents of dyke breaches contaminating sources of water and air pollution making industrial areas critically polluted. Air control devices are not installed in many TPPs. There are incidents of deaths, injuries and loss of flora and fauna.

15. We have considered the data furnished in the reports furnished in pursuance of earlier orders of this Tribunal dated 04.11.2020 in OA No. 117/2014, 14.07.2020 in OA No. 164/2018 and 29.6.2020 in OA No. 148/2020, including the recommendations for remedial action. The compliance status as projected in the reports of the Joint Committees/Oversight Committees shows huge gap in storing, handling, management and utilization of fly ash and consequential continuing damage to the environment and public health. Such huge gaps are patent from the recommendations part in the reports. Deficiencies noted in respect of some individual TPPs appear to be of representative nature and may exist in almost all TPPs, unless shown otherwise on the ground and not in the form of self-serving denial. In the light of the said recommendations, further remedial action needs to be taken to enforce the principle of sustainable development under section 20 of the NGT Act. The recommendations are reproduced below:

"M/s NTPC Limited Shakti Nagar Sonbhadra:
Recommendations of the Committee

xxx

M/s NTPC Limited Rihand Super Thermal Power (Power Plant)

Recommendations of the Committee
xxx

M/s Anpara Thermal Power Plant (Power Plant)
Recommendations of the Committee
xxx

M/s Anpara 'C' Lanco Thermal Power Station
Recommendations of the Committee
xxx

M/s Renusagar Thermal Power Plant
Recommendations of the Committee
xxx

M/s Obra Thermal Power Station (Power Plant)
Recommendations of the Committee
xxx

Coal Mines of M/s Northern Coalfields Limited (NCL)

1. NCL Dudhichuwa Project, Sonbhadra
Recommendations of the Committee
xxx

2. NCL Bina Project, Bina, Sonbhadra
Recommendations of the Committee
xxx

3. NCL Krishna Shila Project
Recommendations of the Committee
xxx

4. M/s NCL Kakri Project, Sonbhadra
Recommendations of the Committee
xxx

5. NCL Khadia Project Sonbhadra
Recommendations of the Committee
xxx

Aluminum Smelter: M/s HINDALCO Industries Ltd.,
Renukoot, Sonbhadra
Recommendations of the Committee
xxx

M/s Grasim Industries Limited Chemical Division,
Renukoot, Sonbhadra
Recommendations of the Committee
xxx

M/s Birla Carbon India Pvt. Ltd., Renukoot,
Sonbhadra
Recommendations of the Committee
xxx

Stone Crusher
Recommendations of the Committee
xxx

A. Thermal Power Plants (TPPs) and Industries

B. Coal Mines of M/s Northern Coalfields Limited
(NCL)
C. Stone Crushers
Recommendations"

1010

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."

11. In other words, the NGT has simply accepted the recommendations as remedial action suggested by the Committee but the same is in the absence of there being objections filed by the appellants herein who were the respondents before the NGT and without giving any hearing to them and against whom directions impugned in these cases have been passed by the NGT. We find that the procedure adopted by the NGT is an instance of violation of the principles of natural justice. Section 19(1) of the NGT Act, 2010 reads as under:

"19.(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice."

At this stage, we may also observe that the recommendations made by an expert Committee are not binding on the NGT, they are only by way of assistance to enable the NGT to arrive at a correct decision in the matter.

12. In this regard reliance may be placed on paragraph 7 and 8 of the judgment of this Court in Sanghar Zuber Ismail (supra) wherein it has been stated as under:

"7. Having regard to the nature of its appellate power, the NGT has to apply its mind to the substantive grounds of challenge. The NGT has merely based its conclusion on the statement which has been made by the project proponent and has not conducted an independent appraisal of the grounds of challenge.

8... the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

13. Furthermore, in Kantha Vibhag (supra), this Court had criticized the practice of delegation of core adjudication to the joint committee:

15. It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

16. Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In *Hanuman Laxman Aroskar v. Union of India*⁹, a two-Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the environment. The Court held:

"133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...

134. NGT is an expert adjudicatory body on the environment."

17. The NGT does not have a dearth of 'expertise' when it comes to the issues of environment.

18. Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees.

19. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner."

14. In a recent landmark decision, Madhyamam Broadcasting Limited v. Union of India (2023) SCC Online 366, the principles of natural justice have been crystalized in the words of Hon'ble CJI-Dr Dhananjaya Y Chandrachud as under:

"53. ...The facet of *audi alterum partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness..."

15. A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

16. In this context, it would be useful to refer to what is known as the 'official notice' doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority

is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial / adjudicatory body.

Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

17. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.

18. We have perused the impugned order of the NGT and particularly paragraph '16' which has been extracted above. It is apparent that the appellant(s) herein who were respondents before the NGT were not given an opportunity to file their objections to the recommendations made by the Committee constituted by the NGT which is apparent by the fact that the recommendations were uploaded on 15.01.2022 and

the final order of the NGT was passed three days later on, **1015**
18.01.2022. Thus, this is a clear case of there being non compliance
with the principles of natural justice. On the said ground alone the
impugned order is set aside, the matter is remanded to the NGT for
re-consideration from the stage of the recommendations filed by the
expert Committee constituted by the NGT. The appellant(s) herein are
permitted to file their objections, if they are so advised. The NGT
shall consider the objections, if any, filed to the recommendations
and thereafter dispose of the applications in accordance with law
and after giving a reasonable opportunity to all parties.

19. The appeals are allowed and disposed of in the aforesaid terms.
Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
JULY 05, 2023

Item No. 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI****(BY VIDEO CONFERENCING)**Original Application No. 862/2022
(I.A. No. 309/2022)

(With reports dated 21.04.2023 and 28.04.2023)

Pankaj Kumar Mishra

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 10.05.2023

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

Respondent(s): Mr. Atif Suhrawardy, Advocate for CPCB

ORDER**The issue**

1. Grievance in this application is against failure of concerned project in Singrauli and Sonbhadra in U.P. and M.P. to control air pollution. Such pollution is taking place during transportation of fly ash by Thermal Power Stations in violation of CPCB Guidelines and also activities of unregulated coal mining and stone crushers. Vide order dated 25.11.2022, the Tribunal sought a factual report from a joint Committee comprising MoEF&CC, CPCB and State PCB.

Factual report of joint Committee

2. Accordingly, report dated 21.04.2023 has been filed by the CPCB with regard to violations found in two parts - first part deals with area

falling in Madhya Pradesh and second with that falling in UP. Report dated 28.04.2023 filed by UP State PCB mentions the follow up action against the violators. We may mention further details of the said reports.

3. Report dated 21.04.2023 with regard to the area falling in Madhya Pradesh

Issues considered

“• Need for installation of the CCTV camera at the strategic locations to track the movements of trucks carrying coal & ash for checking their proper tarpaulin covering and also to keep a tab on the vehicles responsible for coal and ash on public roads.

• Need for regular cleaning of roads/ sweeping of transportation roads where ash & coal dust gets deposited and get entrained on truck movement.

• There are few improper turns/speed breakers on the road from Shaktinagar to Auri to Anapra (Uttar Pradesh) that requires proper scientific designing to avoid road accidents.

• Need for alternate roads/dedicated roads are to be provided/constructed for public vehicles as coal & fly ash transporting vehicles and public vehicles plying on the same road is resulting in increasing number of accidents.

• The road shoulders are not pucca, due to which on vehicle movement the coal dust & fly ash deposited on the sides of the road, get entrains in the ambient and cause heavy fugitive emission.

• There are residential areas adjoining the Shaktinagar to Auri to Anapra Road of Uttar Pradesh which remain heavily affected due dusty surroundings.”

The Committee verified compliance status by different Thermal Power Stations, Coal Mines and Stone Crushers and found serious violations and failure in controlling the air pollution in violations of EC and consent conditions. The Committee has recommended measures required to be followed by the different projects. Observations and recommendations of the Committee are as follows:-

“➤ The coal transported via road majorly goes to Uttar Pradesh (UP) by the route of Shaktinagar to Auri to Anapara (UP) & other places. The second major road route opted for transporting the coal is Jayant mod to Shukla mod to Auri to Anpara (UP) & other places.

➤ The road widening and road repairing work was ongoing of prominent road route of Madhya Pradesh i.e. Jayant mode to Shukla Mod.

➤ The coal dust was found lying on the side of the road route of Jayant to Singrauli to Auri Road. However, ongoing cleaning work was also observed during visit.

➤ The water sprinkler & fogger were found operation on the road route of Jayant mod to Shukla mod

➤ **The coal transportation was being done in trucks and tippers. On random check of the vehicles covers, it was found that a good number of covers were either damaged/torned or were inadequate to cover the truck fully to avoid fall of coal. Secondly the quality of the cover used is also not good. Heavy duty HDPE tarpaulin or cloth cover of required thickness (such as 400GSM or more) to be used for avoiding fall of coal from vehicles. Automatic / mechanical type of tarpaulin cover system shall be installed on each vehicle carrying coal as envisaged in the CPCB Guidelines of 2013 for the transportation of fly ash, for the transportation of coal as well.**

➤ **On random check, it was observed that the dry ash is being transported in bulkers and specially designed covered trucks whereas the wet ash was being transported in truck with full cover on the truck. Transportation of wet ash through tractors is also in practice. However, as stipulated in the CPCB guideline, 2013; currently no such mechanically designed covered trucks are in use to transport the ash from the ash dyke.**

➤ **No effective vigilance through CCTV was found on the major routes of coal & ash transportation.**

➤ **M/s. Suliyari Opencast Coal Mines Project (APMDC) transporting its coal 100% via road to Gajra Behra coal siding and M/s Mahan Energen Ltd Thermal Power Plant and proper upkeep of the transportation road and its timely wetting by water sprinkling has been found to be a concern, about which a large number of local villagers have recorded their protest before the visiting team.**

➤ Progress was observed in the coal mines regarding the proposed new coal handling plants. But the concern remains that the coal mines has undergoing capacity expansion day by day. May be that percentage-wise the coal transportation by road may look less due to installation of added capacity of CHPs, but consequent to the capacity expansion, quantity (tonnage) of coal transport will also increase. Hence strict compliance and vigilance on the part of coal mines will be more required.

➤ **Bad transportation road and delaying in road construction also seems to be cause of concern for the dust on the roads, or trucks dropping coal / fly ash on roads due to bad road conditions, ruts and pot holes etc.**

8.0 Recommendations

- i. *The transporters are using poor quality/ineffective tarpaulin of thin layer as the thickness of tarpaulin is not specified yet. The coal mines & TPPs may be directed to ensure that the truck/tippers cover is of heavy duty such as 400GSM & more thickness and adequate is size to avoid fall of coal & ash on road during transport*
- ii. *Coal mines, Thermal Power plants and District Administration may jointly establish the night vision Pan-tilt-zoom CCTVs & lights at prominent locations along the roads used for transportation of coal & ash. Also establish a control room (24x7) at the Office of Collector/traffic police office with dedicated staff to have effective vigilance on the vehicles engaged in coal and ash transportation.*
- iii. *The TPPs / Coal mine should also device a mechanism to impose penalty on violation by the truckers / transporters including blacklisting the violators or not allowing the trucks found with improper body or insufficient covers to enter their premises to load coal / fly ash. A checklist in this regard shall be maintained at the entry to the mines/TPPs and vehicles not adhering to the norms shall not be allowed to enter the mines/TPPs. Such checklist shall be made available to all the regulatory authorities on request.*
- iv. *Coal mines in consultation with third party agency and road making authorities (NHAI, MPRDC/PWD) shall formulate a traffic management plan with emphasis on road safety on the prominent routes of coal & ash transportation to decongest the traffic and minimize possibility of accidents*
- v. *Coal mines & TPPs to ensure that all the vehicle engaged in transportation of fly ash & coal has valid Pollution Under Check (PUC) certificate and also carryout periodic random PUC check of the vehicles in co-ordination with Regional Transport Office.*
- vi. *Thermal Power plant shall engage mechanically designed vehicles to transport the wet ash too.*
- vii. *MPPCB to ensure effective implementation of the CPCB guideline (2016) for “disposal/ utilization of Fly ash for reclamation of low-lying areas and in stowing of abandoned mines/quarries”. Further, MPPCB shall provide the low-lying area for filling as per*

- the notification and place the allotted locations details (agency, capacity, geo-location etc.) on their website.*
- viii. Nagar Nigam shall deploy mechanized road sweeping machines (on contractual basis) all along the coal & fly ash transportation corridor falling within the municipal limits and the expenditure incurred for the said contract shall be borne by the respective coal/fly ash producers based on their contribution towards road transport.*
 - ix. The district administration in consultation with the neighboring state of UP as well as PWD / Nagar Nigam shall make short term and long-term plan to create alternate / separate roads for the coal / fly ash transportation and for the commuting of the general public.*
 - x. The NAHI should ensure that the work of the National Highway (NH 39) that is being under construction for a long time should be completed at the earliest.”*

4. With regard to area falling in UP

Identical situation has been found. The report mentions site inspection on 21-22.02.2023 of Coal Mines, Thermal Power Plants and Stone Crushers as per details mentioned. Violations have been found in operation of the said units during transportation of coal, fly ash handling and operation of stone crushers. Recommendations have been made with regard to all the three activities as follows:-

“22. Recommendations: *Following are some of the recommendations suggested by the committee to control the air pollution in the area.*

Steps needs to be taken for Fly Ash management and Transportation

22. 1. The TPPs can be asked to strictly follow the CPCB guideline for transportation of pond ash by road. The conditions specifically related to moisture content in the transported ash and vehicle condition need to ensured strictly.

22.2. TPPs also needs to install tyre cleaning facility for transportation vehicle before reaching to the public road.

22.3. The TPPs can be asked to explore the possibilities to increase the use of dry ash instead of pond ash, as the dry ash transportation trough bulker is relatively less polluting.

22.4. The TPPs can be asked to maintain wet surface condition of the ash dykes to avoid the dust emission during the windy condition.

22.5. Committee observed that the fly ash dyke management of the almost all thermal power plant is not up to the mark (Stabilization, maintenance, slope, water recirculation system, transportation, etc.) specially with Obra TPP, Anpara TPP and Shaktinagar TPP. Fly ash dyke can also play pivotal role in generation of dust specially during summer due to improper management. Overall, its management need to be review. MOEF&CC and CPCB can jointly review the Fly ash dyke Management of the entire dyke available in the area in question.

22.6. Improper fly ash dyke management can trigger dyke breaching in the area in question which ultimately plays a significant role in dust emission. Necessary measures can be taken by all TPPs.

22.7. Majority of Road connected from fly ash dykes to main road are unpaved. Local administration can ensure that the all-approach road can be blacktopped and uses of water sprinkler on regular basis for controlling of dust within six months.

22.8. UPPCB can be asked to initiate action against the defaulter TPPs for the various violations as mentioned in the report above

22.9. The illegal dumping of ash along the road sided and inside the forest area is the matter of serious concern. And at the same time none of the TPP is taking responsibility for this dumping. Hence, the vehicle involved in the ash transportation should be GPS enabled and every TPP can be asked maintain the record of the GPS tracking for cross verification

22.10. Similarly, considering the difficulty in monitoring such kind of illegal disposal and fixing the responsibility of the violator, a group of representatives from every TPP can be formulated. Every TPP can be asked to nominate the official working as chief of the environmental cell in the group. And this group can be made responsible for finding out TPP unit responsible for such illegal disposal of the ash. And in case, this group fails to identify the violator, all the TPPs can be held responsible and equal penalty can be imposed through UPPCB.

Steps needs to be taken for Coal handling and Transportation

22.11. Every NCL mining project should install adequate number of fog cannon machines at all the strategic point inside the mining area to suppress the airborne dust. UPPCB should review the installation of the systems on periodic basis

22.12. All the NCL mines should review the frequency of the water spraying on the internal roads through the tankers.

22.13. Every NCL mine should develop SOPs to monitor the status of fugitive emission in the mine area through existing CCTV network. The SOPs should contain guideline to take steps to control the fugitive emission.

22.14. NCL mines can be asked to brought down the road transportation below 10% to comply with the condition of the Environmental Clearance.

22.15. Every NCL mine should install the tyre cleaning facilities for the vehicles used for road transportation of coal and it should be ensure that the tyre of the vehicle reaching to the public road is free from the coal dust

22.16. NCL mining projects should ensure close monitoring of the vehicle involved in the coal transportation. And at any cost the vehicle without authorized number plates and leakages in the body of vehicle should allowed for transportation.

22.17. Every NCL mine should collect the coal dust deposited along the public road by deploying vehicles with vacuum extraction system, and should ensure the beneficial usage od the collected coal dust. They can be asked to maintain records of the same for the verification purpose

22.18. Every NCL mine should strictly comply the condition of the tarpaulin cover on the transportation vehicles as mentioned in the office memorandum issued by MoE&CC. At any cost the coverage through LDPE plastic sheets or green net should be permitted.

22.19. Every NCL mining project should construct a concrete approach road from the coal mine gate to the public road and should also ensure its maintenance and cleanliness.

22.20. Significant quantity of dust is also emitted during loading of coal/fly ash on railway wagon. It is utmost important by concern project to adopt closed loop system for minimization of the dust during loading of coal/ fly ash in railway wagon at earliest.

22.21. As suggested for the TPPs above, a group of representatives from every NCL mining project can be formulated having with officials working as chief of the environmental cell in each project. This group can be made responsible for ensuring coal dust free public roads. And in case, this group fails to comply, equal penalty can be imposed through UPPCB on all the mining projects.

22.22. The TPPs receiving coal through road should ensure that the truck used for transportation is properly covered with tarpaulin. And in case of default, the same can be reported to NCL for taking necessary action

22.23. Every TPP should deploy adequate number of fog cannon machines to control the dust from coal storage areas.

22.24. UPPCB should take immediate action against the N CL mining projects wherein in coal fire incidents are observed.

Steps needs to be taken to control fugitive emission from other industrial sectors

22.25. M/s Hindalco should deploy adequate number of fog cannon machines to suppress the dust from the red mud storage area. UPPCB can initiate action against the unit for not taking any precautionary measure to control the fugitive emission from red mud storage areas.

22.26. The sever air-borne dust in the stone crusher area is matter of serious concerns.

22.26.1. UPPCB can be asked installed separate CAQMS on the stone crushing area i.e., in Dalla area, for regular monitoring of air quality. Till the time UPPCB should manually monitor the ambient air quality of the area at least twice a week.

22.26.2. Local admiration can take cognizance of the air quality data and take prompt action on it. All stone crusher plant can be closed, if, fails to complying the Ambient Air Quality Norm. Responsibility of the individual industry can also be fixed on the non-compliance of the Norms prescribed under AAQ after six months.

22.26.3. No further stone crushers should be allowed in these clusters as UPPCB has a stone crusher siting guidelines requiring distance between any two stone crushers.

Steps needs to be taken for betterment of public road condition

22.27. Setting of advance CCTV Camera network on main public roads used for the transportation of the coal, fly ash etc. for proper surveillance. In a first phase the Auri Mode to Shakti Nagar Road can be considered for installation of CCTV surveillance.

22.28. Each unit can be asked to deploy the adequate number of mist guns/ fog cannons to suppress the airborne dust. The required number can be calculated by UPPCB considering the capacity of the unit and number of trucks involve in road transportation

22.29. To avoid the disturbance to the public transportation and to control the air pollution, Scientific Transportation Management Plane (STMP) need to be prepared by Local Administration under consultations with the UPPCB, the plan can be scientific based on the

peak dust emission on the road, which can be easily assess by the data of installed CAQMS, average vehicular movement per day etc.

22.30. Unpaved area of road side can be paved by using fly ash block, which may substantially reduce the dust emission on the road.

22.31. Regular and substantial road cleaning is another way to minimize further dust emission specially from the both side of median and unpaved area of the road. The coal dust deposited along the roadside needs to be collected through the vacuum extraction system for beneficiary utilization.

22.32. It has been observed that the median of the national highway are without any green cover of plant, it is utmost important to create proper green cover on the median of the National Highway by concerned authority for controlling of road dust.

22.33. The establishment of the road green belt (RGB) is an effective means to reduce particulate matter (PM_{2.5}) emissions from road traffic. It is utmost important to execute CPCB guideline for controlling of dust emission.

22.34. District administration through NHAI can explore the possibility to develop green belt along the road side in accordance with the guideline developed by Indian Road Congress (IRC).

Steps required to resolve other identified issues

22.35. Local administration through police can controlled the unauthorized coal burning used by local people and shops. More stringent surveillance is required during winter.

22.36. UPPCB can ensure that the each and every industry colony will setup concrete Solid Waste Management System (SWMS) to avoid further burning of solid waste within six months.

22.37. Dust sequestration study of individual unit can be conducted by organization of international repute likes, BHU, NEERI, IIT etc.

22.38. Chief Medical Officer (CMO) can be asked to conduct survey among the people living side of the highway, dust prone area in light of lung related disease etc. In addition to above he may also create separate inventory for the asthmatic patient of the area in question

22.39. The action can be initiated in under Forest Act against Mis Renusagar TPP and M/s Obra TPP for carrying out excavation/ mining in the forest area.

Further, it is humbly submitted that the Hon'ble NGT in the matter of OA No 164/2018 has constituted a fly ash

management and utilization Mission to be jointly headed by the Secretaries, MoEF&CC, Coal and Power, Gal, and Chief Secretaries of UP and MP. It is pertinent to note that the issues raised in the present application are closely linked to the scope of the aforementioned Mission. And hence the finding of the committee can be referred to the Mission for its consideration.

5. **Report dated 28.04.2023 of UP State PCB** mentions follow up with reference to recommendations of the joint Committee with regard to units in UP - NCL-Bina, Distt. Sonbhadra and Obra Thermal Power. Closure order has been passed against seven defaulting stone crushers under the Air (Prevention and Control of Pollution) Act, 1981.

Consideration and further directions

6. We have considered the matter in the light of the above. From the factual report by the joint Committee, it is seen that covers of the vehicles used for transportation were inadequate to prevent spillage of coal. Quality of covers was not good. There are no mechanically designed covered trucks to transport ash nor effective vigilance through CCTV. There was no timely sprinkling which was resulting in air pollution. Thus, there are violations which need to be stopped forthwith and accountability fixed for past violations. We have noted from the report that following units are operating and have been found to be violating the norms by the Committee in M.P. and U.P:-

IN MADHYA PRADESH

Thermal Power Plants

1. M/s. Vindhyachal Super Thermal Power Project-NTPC, Stage -I (6 Units)
M/s. Vindhyachal Super Thermal Power Project - NTPC Stage II (2 Units)
M/s. Vindhyachal Super Thermal Power Project, NTPC, Stage-III, (2 Units)
M/s. Vindhyachal Super Thermal Power Project Stage-IV, (2 Units)

- M/s. Vindhyachal Super Thermal Power Project Stage-V (1 Units)
2. M/s. Sasan Power Limited, Village, Siddhikhurd, Post- Tiyara, Tal & Dist: Singrauli (M.P.) (6 Units)
 3. M/s Jaiprakash Power Ventures Ltd.-Jaypee Nigrie Super Thermal Power Project, Vill. - Nigrie, TahsilDeosar Distt. - Singrauli MP (2 Units)
 4. M/s. Mahan Energen Limited (Formerly Known as Essar Power MP Ltd.), Vill: Bandhaura, Teh. Mada, Dist: Singrauli (M.P.) (2 Units)
 5. M/s. Hindalco Industries Limited- Mahan Aluminum Project, Vill: Bargawan, Tal: Devsar, Dist: Singrauli (M.P.) (6 Units for captive power generation)

Coal Mines

1. M/s. Bina Ext Project- NCL
2. M/s. Khadia Project-NCL,
3. M/s. Dudhichua ProjectNCL
4. M/s. Jayant Project-NCL
5. M/s. Nigahi Project-NCL
6. M/s. Amlori Project-NCL
7. M/s. Block B Project-NCL
8. M/s. Jhingurda Project-NCL
9. M/s. Suliyari Opencast Coal Mines Project (APMDC)
10. M/s. THDC India Limited
11. M/s. Amilia North Coal Mining Project, Jai Prakash Power Ventures Ltd
12. M/s. Moher & Moher, Amlori Extension

IN UTTAR PRADESH

Coal Mines

1. NCL Dudhichua
2. NCL Bina
3. NCL Khadia
4. NCL Krishnashila
5. NCL Kakri

Thermal Power Plants

1. M/s NTPC Rihand
2. M/ s Anpara TPP
3. M/s NTPC Shakti Nagar
4. M/s Lanco TPP
5. M/s Renusagar TPP
6. M/s Obra TPP

Other Industries

1. M/s Hindalaco Industry
2. M/s Ultratech Cement, Dalla
3. M/s Ultratech Cement (Dalla Super)
4. M/s Grasim Chemical Industry
5. M/s Birla carbon black

7. It is further mentioned that there are around 313 stone crushers operational near the Dalla area. Other units have to be identified.

8. The report also states that the issue of fly ash management in the area by thermal power stations stands covered by the directions of this Tribunal vide order dated 18.1.2022 in OA 164/2018, Ashwani Kumar Dubey v. UOI and thus remedial action with regard to the violations now found can be overseen by the said committee.

Directions

9. In the light of above, concerned PPs - Thermal Power Plants, Coal Mining Units and Stone Crushers and also management of Railway Siding have to forthwith take necessary preventive and remedial measures, including measures to control dust emissions while transporting coal and fly ash as well as during industrial operations in terms of EC and consent conditions. Fly ash handling and utilization has to be in accordance with laid down procedures. In case of violations, statutory regulators have to close such units till compliance. Further, accountability has to be fixed for past violations. The measures so far taken by UP State PCB are not adequate. There is no report about remedial action by the MP State PCB.

10. The report of the Committee is available on the website of NGT. The respective State PCBs may also place the same on their websites so that PPs can access the same and give their response.

11. As rightly pointed out by the Committee, the issue of fly ash management in the area by thermal power stations has already been dealt with by the Tribunal vide order dated 18.1.2022 in OA 164/2018, *Ashwani Kumar Dubey v. UOI*. Operative part of then order is as follows:

“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.”

12. Accordingly, a copy of the report be forwarded to the Secretary, MoEF&CC for further action in terms of above order considering violations found by the Committee. An action taken report in the matter be filed within three months by the Secretary, MoEF&CC. CPCB may give information with regard to action taken for past violations in terms of direction (ii) above.

13. With regard to the issues not covered by the order dated 18.01.2021 i.e. compliance by mining units and stone crushers, we constitute a joint Committee of CPCB, UP and MP PCBs and District Magistrates and DFOs Singrauli area in UP and MP (nodal agency being CPCB and concerned State PCB) to oversee compliance of norms and determine the liability of erring units on ‘Polluter Pays’ principle for past violations having regard to nature and extent of violation, cost of remediation and turnover of the units. This exercise be completed within three months. The joint

Committee may also undertake carrying capacity of the area to sustain the number of stone crushers and siting criteria required to be followed including in terms of *inter-se* distance. Such carrying capacity be calculated based on the available data. Forest Departments of UP and MP may also take necessary action under the relevant statutory provisions to ensure that no fly ash/ash slurry or waste is dumped in forest area and necessary and requisite plantations are undertaken. The Forest Departments may also take necessary action against the violators, following due process of law. The Committee may also give the status of execution of plan to bring down Comprehensive Environmental Pollution Index (CEPI) level. **The joint Committee may give its report by 15.09.2023** by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. Copy of the report may also be furnished to the stakeholders by placing the same on appropriate website, intimating the said stakeholders. Any party wishing to file their response may do so by 30.09.2023. Erring units may be put to notice of these proceedings by the concerned State PCB so that they have opportunity to file their respective response before this Tribunal, if so advised. If no response is filed, this Tribunal will pass further orders with regard to their accountability. Chief Secretaries of UP and MP may look into the issues with regard to measures to be taken by the State Administration such as construction of necessary roads in the area. Inter-state coordination mechanism may also be reviewed and strengthened. It is made clear that if there is a failure, the liability of the said States will also be determined by this Tribunal on the next date. In absence of any other data, the compensation of erring units may be determined at the rate of 1 per cent of the turnover of the concerned unit subject to assessed cost of remediation being recovered.

List for further consideration on 11.10.2023.

A copy of this order be forwarded to Secretary, MoEF&CC, Chief Secretaries of UP and MP, CPCB, UPPCB, MPPCB, District Magistrates and DFOs Singrauli area in UP and MP by e-mail for compliance.

I.A. No. 309/2022 has been filed for permission to file additional documents comprising of photographs of factual position on SH 5A Audi-Shaktinagar Road and NH-39 Singrauli Dibulganj- Renukoot Road located in Anpara, Sonbhadra, UP. The additional documents are taken on record but the applicant may serve the same on CPCB, UPPCB and MPPCB for consideration by the joint Committee. I.A. No. 309/2023 stands disposed of accordingly.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 10, 2023
Original Application No. 862/2022
(I.A. No. 309/2022)
SN