

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 725 OF 2022

IN THE MATTER OF:

ANURAG SHARMA

...APPLICANT

VERSUS

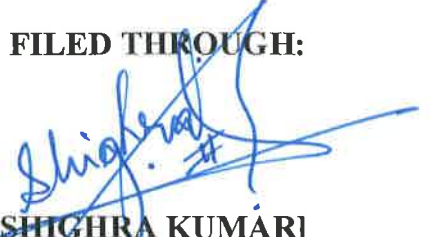
STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

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NEW DELHI

Dated: 18.10.2024

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

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STATE OF UTTAR PRADESH & ANR.

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**SHORT SUBMISSION ON BEHALF OF THE RESPONDENT
NO.2/LPGCL.**

1. That on the last date of hearing dated 14.10.2024 this Hon'ble Tribunal had allowed the Respondent No.2/LPGCL to file short submissions in order to assist this Hon'ble Tribunal.
2. That in the present application the following issues were raised:
 - i) Legacy fly ash
 - ii) Fly ash in cement
 - iii) Fly ash if used in bricks
 - iv) Tree Plantation
 - v) CSR/CER
 - vi) Fly ash being utilized in low lying areas.
3. That with respect to serial No. 1 to 5 the Respondent No. 2/LPGCL had filed affidavits, made submissions and addressed the issues to satisfy this Hon'ble Tribunal.
4. A cross-reference chart with regards to the above issues (serial no. i to vi) may be found on running pages 994 to 999 of the paper book before this Tribunal.
5. That in the order dated 05.09.2024, this Hon'ble Tribunal became concerned with the disposal of fly ash in low lying areas as done by Respondent No. 2/LPGCL and made observation thereto.

6. In order to clarify the stand of the Respondent No. 2/LPGCL the present short submissions are being made.
7. It is humbly submitted that on **14.09.1999**, the Ministry of Environment, Forests, and Climate Change (MoEF&CC) issued notification with respect to disposal of fly ash (Running Pg 692-695 of the paper book). In paragraph No.3 of the said notification fly ash was permitted to be used as land fill to reclaim low lying areas.
8. On **27.08.2003** another notification was issued by MoEF&CC with respect to disposal of fly ash (Running Pg 696-702 of the paper book). At paragraph No. 7 of the said notification, it was specified that within a radius of 100 kms of a thermal power plant reclamation and compaction of low-lying area shall be done by fly ash (pond ash) and not by soil.
9. On **03.11.2009** MoEF&CC issued another notification with respect to disposal of fly ash (Running Pg 703-713 of the paper book). At paragraph No. 5 it was reiterated that only fly ash shall be used within 100kms of Thermal Power Plants for reclamation and compaction of low-lying areas and not soil.
10. On **31.03.2011** Environmental Clearance was issued in favour of the Thermal Power Plant project of the Respondent No. 2/LPGCL. One of the conditions being condition No. XX specified that no ash shall be disposed of in low lying area.
11. The said condition No. XX of the Environmental Clearance as such was discordant to the mandate of the aforesaid Fly ash notifications of the year 1999, 2009 & 2022 issued by MoEF &CC. As such there was a disquiet,
12. Pertinently, MoEF&CC was called upon by an expert committee to revisit the conditions stipulated in the existing Environmental Clearances of Thermal Power Plants with respect to fly ash utilization and modify them in consonance with fly ash notifications.

13. Hence, on **28.08.2019** MoEF&CC issued a change in conditions stipulated in the Environmental Clearance of Thermal Power Plants in line with Fly ash notification and subsequent amendments. A reading of the same would show that the existing conditions in the Environmental Clearance which prohibited the Thermal Power Plants from using fly ash in low lying areas/abandoned mines/soil conditioners in agriculture were done away with.
14. Therefore, the objectives of the Fly ash notifications for the year 1999 and its amendment were given effect to. Accordingly, the R2/LPGCL stood allowed to use fly ash for reclamation of low-lying areas.
15. This permitted usage of fly ash by any Thermal Power Plants for reclamation of low-lying areas was well understood and accepted by all project proponents; MoEF&CC; Ministry of Power Central Electricity Authority; respective State Pollution Control Boards and Central Pollution Control Boards. A six-monthly Environmental Clearance compliance and monthly abstract of ash generation and utilization was regularly sent to the statutory bodies showing fly ash utilization in reclamation of low-lying areas as well its usage in other modes.
16. Further, a report dated August, 2022 by the Government of India acknowledges that 35.57 million tons was used in reclamation of low lying areas in 2021-22 constituting 13.13% of the total fly ash generation during the aforesaid year.
17. This position regarding fly ash utilization being permitted to the Thermal Power Plants for reclamation of low-lying areas was well understood by all. Rather than permission being given to the Thermal Power Plants for reclamation of low-lying areas it was in fact a responsibility cast upon Thermal Power Plants to dispose of the fly ash in specified modes including reclamation of low-lying areas.
18. To this end, it would be apposite to refer to the notification dated **31.12.2021** issued by MoEF&CC relating to fly ash which sets out in Para A thereof, the responsibility of Thermal Power Plants for disposal

of fly ash and bottom ash in filing low lying area (refer A(2)(v) of the said notification).

19. It is thus submitted that all the fly ash disposal for the purpose of the reclamation of low-lying areas is in consonance with the notification issued by MOEF&CC from time to time.
20. It would be pertinent to mention here that the notification dated 31.12.2021 issued by MoEF&CC subsumed all the earlier notifications and the same has been reiterated by the Hon'ble Supreme Court of India in "**Aravali Power Co. (P) Ltd. v. Vedprakash, 2022 SCC OnLine SC 645**" and the relevant part of the said judgement is being extracted herein for the convenience of this Hon'ble Tribunal:

"...6. The consequence of the notification dated 31 December 2021 is that the earlier notifications would get subsumed by the terms of the notification. The NGT in the impugned orders had found fault with the TPPs due to their failure to comply with the notification dated 25 January 2016 and the extended deadline which was fixed for the utilization of fly ash. In view of the subsequent development which has taken place, the basis of the order of the NGT would be fundamentally altered by the modalities and time-lines which are prescribed by the notification dated 31 December 2021. In view of the latest notification, the orders of the NGT would have to be set aside together with the imposition of the measure of compensation as directed in the impugned orders..."

21. Moreover, it is humbly submitted that this Hon'ble Tribunal vide its order dated 20.12.2022 constituted a joint committee comprising of representatives of Central Pollution Control Board (CPCB), Uttar Pradesh Pollution Control Board (UPPCB), Regional Office-Ministry of Environment Forest and Climate Change (MoEF&CC) at Lucknow, the Deputy Conservator of Forest, Jhansi and the District Magistrate, Lalitpur, U.P. to undertake visit to the site within two weeks and verify the factual position regarding compliance with EC/Consent Conditions and environmental norms by the project proponent i.e., Respondent No. 2/LPGCL. The said committee vide its report dated 04.02.2023 affirmed that the Respondent No. 2/LPGCL is complying with

EC/Consent Conditions and environmental norms and the disposal of fly ash was in accordance with notifications issued by MoEF&CC from time to time.

22. It is humbly submitted that the Respondent No. 2/LPGCL is complying with EC/Consent Conditions and environmental norms and the disposal of fly ash is in accordance with the notifications issued by MoEF&CC from time to time and the same has been confirmed by UPPCB vide its various reports dated 07.08.2023, 12.02.2024, 07.05.2024, and 07.08.2024 filed before this Hon'ble Tribunal and the same was further affirmed by the MoEF&CC in its reply dated 10.08.2024.
23. In view of the aforesaid, the Respondent No. 2/ LPGCL humbly submits that the fly ash generated by the power plant is being utilized 100% in line with the notifications issued from time to time with regards to disposal of fly ash by the MoEF&CC, and as such, the present application filed by the Applicant is liable to be dismissed.

FILED THROUGH:



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Dated: 18.10.2024



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O.A. NO. 725 OF 2022 in the case titled Anurag Sharma Vs. State of Uttar Pradesh and Anr. (Written Submissions on behalf of the Respondent No.2/LPGCL)

1 message

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To: Anurag Sharma <anuragsansad@gmail.com>
Cc: Sanjeev kumar Singh <sanjeevsingh2102@gmail.com>

Fri, Oct 18, 2024 at 1:12 PM


Sir/Madam,

Please find attached Written Submissions on behalf of the Respondent No.2/LPGCL in O.A. NO. 725 OF 2022 titled as "Anurag Sharma Vs. State of Uttar Pradesh and Anr." pending before the Hon'ble National Green Tribunal. Kindly acknowledge the receipt of the same.

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*Thanks & Regards,****Legal Vibes Law Firm***

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 **Written Submission (Respondent No. 2).pdf**
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