

April 21, 2024

The Hon'ble Chief Justice of India
Supreme Court of India
New Delhi

Hon'ble Dear Sir,

Sub: Government flouts its own Acts- Amicus Brief on the cases of '100%-fly ash utilisation'.

I am Dr N Bhanumathidas, aged 70 years, crusading over last 34 years for promoting fly ash utilization through development of breakthrough technologies. In our commitment to catalyse 100% fly ash utilization, we have dedicated to the Nation our breakthrough FaL-G technology for the production of fly ash bricks. We stood 1st at the National Grand Challenge on fly ash utilization (2019) for our Nano Concrete technology that contains over 75% fly ash.

Responsible citizens like us come out of the distress while CJI and other Judges of Supreme Court address their anguish through rulings and observations. This is evident over the last couple of months in the cases of demonetization, Patanjali, Electoral bonds, Article 370, Manipur atrocities etc.

It has become order of the day for the Ministries to flout the rules and statutes and, there upon, misguide the office of Advocate General as well as the Judiciary too, in order to camouflage their misdeeds. To cite an example of government flouting its own rulings, the decision taken at 47th meeting of GST Council (the constitutional body), reducing GST on fly ash bricks to 5% on environmental merits, is not carried on in ensuing notification. This is a glaring incident of external elements forcing the Government to take U turn.

Such highhandedness is not an exception in the case of Min. of Power (MoP) with regard to fly ash utilization, necessitating this representation. This appeal is made after the stakeholders sweating out to enlighten the government through various statutory means and deeds over the last couple of decades. The struggle is more evident over the last couple of years where the issues have caught the attention of judiciary, ultimately reaching to seek the kind attention of Hon'ble Supreme Court.

This is the case of Min. of Environment, Forests and Climate Change (MoEFCC) flouting its own rules and Acts on the need of 100% fly ash utilisation, obviously because of pressure from MoP, may be due to hidden agenda for satisfying a section of the power industry. The submission goes as follows:

1. 'Polluter Pays Principle' (PPP) is the edifice of environmental laws of UNEP, UNFCCC and various countries globally, including India, which is also the basic premise for our Environment Act 1986.
2. It is well established in various court orders and reports that fly ash, the residue out of coal combustion in coal based thermal plants, is the 'pollutant' and thereby the power plants are the 'polluters'. As of now, over 250 million tons of fly ash is

generated all over the country every year, the accumulation of which is causing ground and air pollution.

3. At the directions of Hon'ble High Court of Delhi dt 25/08/1999, MoEFCC has published its 1st Notification dated 14/09/1999, directing all power plants to achieve 100% utilization of fly ash. PPP and conservation of top soil are two guiding principles of this Notification.
4. Having failed over 22 years for achieving 100% fly ash utilization despite series of Notifications and amendments, MoEFCC has brought out a comprehensive notification dated 31/12/2021 reiterating polluter pays principle and top soil conservation. But, mysteriously MoEFCC has created room for 'Polluter Earns Principle (PEP)' in the same Notification, contravening its own basic principles in the Notification.
5. Taking advantage of this provision, Min. of Power (MoP) has issued an advisory in 2022 for monetizing fly ash, unmindful of its potential in causing air and ground pollution that has necessitated the intervention of Courts at various occasions over last several decades.
6. In response to a petition filed against the Advisory of MoP for monetising fly ash, NGT has ordered to put the Advisory at abeyance (OA No. 327/2022), predominantly based on 'Polluter Pays Principle'. This PPP is also the governing rule of NGT while delivering the judgments, as enshrined vide NGT Act 2010.
7. Presumably, missing to analyse the heart and soul of this case, NGT Order was stayed (24/2/2023) at Hon'ble Supreme Court within 20 days of MoP's appeal. As against this urgency, the petition for Vacation of Stay (05/05/2023) has taken 5 and 1/2 months to come on record with registry (Doc No. 220988/2023 dt. 19/10/23). This stay petition has not come for hearing till now even after 340 days, presumably due to pressure of pending cases, but obviously weakening the very purpose of seeking the 'Vacation'.
8. Meanwhile, taking advantage of SC stay, which is interim and conditional, but certainly not blanket stay, MoP has issued another advisory (28/02/23) implementing its 'Polluter Earns Agenda' by monetising fly ash, unmindful of resultant accumulation to aggravate damage to environment. Thus, MoP is blatantly flouting the norms of Environment act and NGT act as well as relevant notifications and orders.
9. It is worthy to highlight that power plants keep polluting ground and air until the fly ash in ash ponds is utilized till last ton of storage. Thus, whatsoever utilization that the power plants claim by other means is only partial, and cannot absolve them of their misdeed as 'Polluter'. It is striking that by virtue of breaching of ash ponds, 76 disasters took place over last one decade at various parts of the country causing in loss of humans, cattle and fertile land.

(76 major disasters in 10 years, norms diluted even as coal ash accidents became 'routine' - Carbon Copy;)

10. MoP and some power plants have made counterfactual claims of 100% fly ash utilization to Hon'ble courts which are not true on ground. This is evident by the failure of all power plants in filing the statutory audited reports for 2022-23 against their fly ash utilisation, as admitted by CPCB to one of the replies on RTI in 2023.
11. Hon'ble My Lord, this is not simply a civil case; but this is a case of National importance with its overtones on the Environment, Ecology, Economy and empowerment where the operations of over 30,000 fly ash brick plants with their workforce of over 4.50 lakhs are involved and, efforts of bringing up over 100,000 plants are jeopardized. This would have helped curbing of clay brick production correspondingly (approx.300 billions), conserving fertile top soil, preventing pollution and bringing down carbon foot print in huge quantities. (<https://fal-g.com/wp-content/uploads/2021/10/FaL-G-CDM-Brochure.pdf>).
12. This is the case of blowing to winds the sacrifice of a Scientist-Couple who dedicated their FaL-G technology to the Nation in the interest of catalysing the promotion of 100% fly ash utilization, despite having the patent on hand and chance of earning crores of rupees as royalty. (<https://fal-g.com/wp-content/uploads/2021/10/Case-Study-INSWAREB-ECPL-May-2011.pdf>).
13. This is the case of MoP yielding to the malafide designs of a section of power industry for monetizing fly ash for a few crores of benefit, unmindful of billions worth of damage to environment, ecology and carbon foot print.
14. Over 30,000 entrepreneurs are looking forward to us that we do convince Judiciary towards fair laws on fly ash utilization but we are getting stuck continuously. This is the context of eluding justice at which this representation is addressed to you for the explanations given above. The referred cases are CA 1508 and CA 1510/2023. Attached the chronology of events in the progress of these cases.

Please forgive me if this representation has missed to observe the procedural norms in the anxiety of vindicating justice to over 30,000 micro and small scale entrepreneurs. The concern is to protect the environment and ecology endangered due to lopsided policies of government. Hence, it is appealed to hear at least the vacation of stay petition on its merits so that NGT order may be upheld till final judgment of the case.

With regard to any case of fly ash issues, I offer my services as Amicus Curiae in order to offer insight on scientific, technical and environmental merits.

Thanking you,

Sincerely yours,

Dr (Ms) N Bhanumathidas

Chronology of cases with regard to MoP advisories on Fly ash: Grey areas in the progress of the Cases

NGT Order in OA No 327/2022

Civil Appeal No. 1508: Union of India (Petitioner) Vs Amaravati Bricks Mfrs. Assn & others.

Civil Appeal No. 1510: NTPC Ltd. (Petitioner) Vs Amaravati Bricks Mfrs. Assn & others.

Impleadment Petition Dt 13/10/23: VA FABMAS Vs NTPC in CA 1508

Date	Dy. No./Case No./Document	Object and features of document	Comments
22/09/21	MoP Advisory Letter to all TPPs	Encouraging TPPs to sell fly ash through bidding process, on the pretext that fly ash is emerging as a valuable commodity.	This letter is full of counterfactual claims in the euphoria that TPPs have attained 100% utilisation of fly ash whereas, in reality they have attained about 60% utilisation at National average.
31/12/21	MoEFCC Notification	Since MoEFCC has realised that TPPs have not attained 100% utilisation, in order to drive them to the task, this new notification is issued on the basic pedestal of 'Polluter Pays Principle', imposing to pay environment compensation of Rs. 1000/-per ton both for unutilised fly ash and legacy (pond) ash.	To discourage counterfactual claims by TPPs, this Notification has redefined fly ash, separating out pond ash in the title of Legacy ash, setting up targets for both. Thus, the burden has been increased to TPPs, more so with liability by virtue of Environment Compensation. But, mysteriously, this notification has also made room for 'Polluter Earns Provision' making self-goal of its own agenda.
22/2/22	MoP Advisory	MoP is determined to sell fly ash through bidding in the guise of complying the Notification, taking total U turn in reality.	MoEFCC Notification upholds 'Polluter Pays Principle' as notified by Environment Act and NGT Act, whereas MoP is trying to introduce 'Polluter Earns Principle' which has no statutory sanction of whatsoever nature.
25/8/22	NGT Order in OA No. 327/2022	NGT has given a stay on MoP Advisory dt. 22/2/22 stating that the advisory is not to be enforced.	NGT is obliged to deliver its judgment abided by 'Polluter Pays Principle' which is same principle upheld in MoEFCC Notification.

Date	Dy. No./Case No./Document	Object and features of document	Comments
06/12/22	MoP's letter to TPPs	Asking TPPs to keep their advisory under abeyance in view of NGT order.	Fair approach.
04/02/23	Vide Dy. No. 5546/2023 MoP has filed SLP	Seeking to prove that 1) NGT order is totally wrong. 2) MoP has the right to issue Advisory to sell the fly ash.	MoP made counterfactual claim that 100% fly ash utilisation has been attained by many plants, which is not true.
07/02/23	NTPC has filed a WP vide Dy No. 5546.	All those aspects mentioned by MoP have been repeated in this WP.	But, incidentally as well as mysteriously, despite common subject and same respondents, SC did not insist to tag this case with CA 1508. Registered it as separate case No. 1510.
28/02/23	WP of NTPC is registered with Case No. 1510		But no notices have been served on respondents till 16/10/23, the date of first hearing.
24/2/23	SC stays operation and effect of impugned order of NGT.		As a matter of fact, MoEFCC is the regulator and TPPs are polluters. Thus the Notification is purely an issue between regulator and polluters. MoP has no role to interfere in this issue, which the Judiciary appears to have not taken into cognisance.
28/02/23	Another MoP Advisory	Reiterating their earlier advisory dt. 22/2/22 in view of SC Stay on NGT order.	The stay is wrongly projected by MoP as absolute stay, whereas, in fact, it was interim stay. Thus they are pushing forward the implementation of their Advisory unmindful of interim stay, causing great damage to the justice of this case.
05/05/23	Vacation of Stay filed by Amaravati Assn. against SC Stay on NGT order		This is mysteriously taken on record on 19/10/23 as Doc No. 220988/2023, after five and half months of its filing with Registry.

11/07/23	CA Hearing at SC, order issued.	Against 1508 it is mentioned in the Order, "despite service of notice on respondent No. 1 to 5, there is no appearance. Against 1510 the Order says, 'Let reminder be issued to the concerned Tribunal.....'.	
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Date	Dy. No./Case No./Document	Object and features of document	Comments
23/08/23	Only 1509 and 1510 are listed. Order issued.	1508 is not listed on this date.	Against 1510 the Order says, "Await service report from the concerned Tribunal in respect of respondent Nos. 1 to 6. Let reminder be issued"
04/09/23	Counter to MoP's SLP filed by Amaravathi Assn.	To clarify on various distorted facts promoted by MoP in its SLP.	Inexplicably this is filed taken on record after seven months.
14/09/23	VA FABMAS, another Brick Mfrs Association from Visakhapatnam, filed a WP No. 1069, Regd on 26/09/23.	This petition sought an Injunction on the Advisories of MoP.	This is felt necessary as MoP is progressing ahead with its Advisories, misinterpreting interim stay of SC as absolute stay.

23/09/23	1 st Urgent Petition filed by Amaravati Assn	For early hearing of the case.	Not taken for hearing by Hon'ble Supreme Court.
27/09/23	In response to the urgent petition, as per the Advocate, SC Order mentioned, "Not to be deleted from the notified date",	Urgent petition filed seeking for early hearing of case, since MoP is going ahead with its object, ignoring the 'Interim Stay' of SC.	Advocate mentioned that this order is against the 'Urgent Petition' whereas the CA no. 1508 was not mentioned for hearing on the said date. In the Order it was mentioned, 'only CA 1509 and 1510 of 2023 are listed'.
09/10/23	SC Order on VA FABMAS petition mentioning, "The writ petition is dismissed as not entertained".	SC suggested in the Order that Petitioner may file an application for impleadment in CA No. 1508.	
14/10/23	Impleadment petition filed by VAFABMAS in CA 1508 vide Doc. No. 215585/2023	The object of VAFABMAS is to seek Injunction on Advisories of MoP.	But the Impleadment Petition made NTPC as respondent, missing the main object of Injunction on MoP-Advisories in the Prayer.

14/10/23	Second urgent petition is filed by Amaravati Association.	For early hearing of the case vide Doc. No. 215584/2023	
16/10/23	SC has listed only 1509 and 1510 pursuant to its order dt. 27/09/23	Since Petitioner came to know about Petition of 1510 only this day, four weeks time was sought to file counter which was duly accepted by SC.	Despite originally listed, mysteriously the case 1508 is not taken up for hearing on this day.
19/10/23	Petition for Vacation of Stay has been taken on record vide Doc No. 220988/2023	The inputs for this petition were given on by 27/3/23 and the Advocate filed on 5/5/23.	Mysteriously the petition was taken on record on 19/10/23, after 5.5 months of filing, and the advocate attribute it to the tacit process at SC Registry.
28/11/23	Sr. Advocate has been appointed.	Because of inefficient handling of case, the advocate has been changed; the Senior Advocate has been appointed.	Despite filing Vakalatnama on 28/11/2023, the case could not proceed further, even after lapse of over 5 months.
13/12/23	Case 1509, 1510 have been heard.	4 weeks time has been given to Resp. 1 to file counter affidavit.	After expiry of said period, matter shall be processed for listing before the Hon'ble Court as per rules.
18/12/23	Counter Affidavit filed vide Doc No. 263997/2023	This is in response to the order dt. 13/12/23 in CA 1510.	
15/03/24	MoP issued another circular in the form of guidelines on fly ash to all power plants.	It shows MoP is the regulatory body on fly ash but not MoEFCC.	This highhandedness is because of stay continued on NGT order indefinitely, without hearing the appeal for Vacation of Stay.

Grey areas/gaps in this case:

- 1) While MoP filed its SLP on 4/2/23 and Respondent provided their inputs by 28/4/23 with follow up note by 06/07/23, the counter was taken on record vide Doc No. 180645/2023, only on 4/9/23.
- 2) While stay on NGT Order was given on 24/2/23, and Respondent provided their inputs by 27/3/23 for Vacation of Stay, the Advocate filed on 5/5/23 which is mysteriously taken on record on 19/10/23. Advocate attributes it to tacit process procedure at SC Registry which the petitioner is unable to reconcile.
- 3) While hearing the case on 23/8/23, no listing of 1508. Only 1509 and 1510 have been discussed with a ruling, *"Await service report from the concerned Tribunal in respect of respondent Nos. 1 to 6. Let reminder be issued"*.
- 4) Against the WP of VA FABMAS for Injunction on Advisories of MoP, and as per the Order of SC dt. 09/10/23, impleadment petition was filed on 14/10/23 in CA 1508. The object of VAFABMAS is to make MoP and others as Respondents for seeking Injunction on Advisories. But inexplicably, NTPC only is made as the Respondent and no mentioning of 'Injunction on Advisories' in the Prayer.
- 5) Because of inefficient handling of case, the earlier advocate has been changed; the senior advocate has been appointed, who filed their Vakalatnama on 28/11/2023. But the case could not proceed further, even after lapse of over 5 months.