

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH**

(By Video Conferencing)  
Original Application No.327/2022  
(I.A No. 110/2022) & (I.A No. 174/2022)

Amaravati Fly Ash Bricks Manufacturers  
Association ...Applicant

Versus

Union of India & Ors. ...Respondents

Date of hearing: 25.08.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Gaurav Kumar Bansal, Advocate.

Respondents: Mr. Kumar Rajesh Singh, Advocate for respondent no.1.  
Mr. Gi. Gi. C George, Advocate for respondents no. 3 & 4.  
Ms. Rajeswari Mukherjee, Advocate for respondent no. 5.

**Application under Section 18 (1) read with Section 14 of the National  
Green Tribunal Act, 2010.**

**ORDER**

1. The Amaravati Fly Ash Bricks Manufacturers Association has filed the present application under Section 18 (1) read with Section 14 of the National Green Tribunal Act, 2010 seeking the following reliefs:

*“ a. To quash Office order dated 22.02.2022 issued by Respondent no. 4;*

*b. To quash the Office order dated 16.03.2022 issued by Respondent no. 5;*

*c. Direct Respondent no. 4 to issue Office order to prohibit dumping of ash into pond ash as the same not only contaminate the soil but also causes ground water and air pollution;*

*d. Direct Respondent no. 4 to issue Office Order to all the Thermal Power Plants to put Fly Ash depots at Urban Growth Centers to cater the need of fly ash to brick industry so that the maximized fly ash consumption would not only save crores of rupees of Thermal Power Plants but would also result into providing affordable power to consumers; and*

*e. Pass any other directions or orders as deemed fit by this Hon'ble Court"*

2. The applicant has pleaded that Ministry of Power, Government of India had issued advisory order dated 22.09.2021 directing all the Thermal Power Plants to provide fly ash to end users through transparent bidding process only. This Tribunal vide *order dated 18.01.2022 passed in O.A No. 164/2018 (earlier O.A No. 276/2013) titled as "Ashwani Kumar Dubey Vs. Union of India and Others"* held that the decision regarding sale of fly ash was not viable as there were no buyers perpetuating storage to the detriment of environment and public health and cost and that such advisory is not only unmindful of disastrous consequences but is also against Statutory Notification dated 31.12.2021 issued by Ministry of Environment, Forest and Climate Change (MoEF & CC). The applicant has further pleaded that the Ministry of Power, Government of India (MoP, GoI) has, in continuation of its earlier order dated 22.09.2021, issued impugned advisory order dated 22.02.2022 directing Thermal Power Plants (TPPs) to provide fly ash through bidding process only which is not only a deliberate attempt to turn down the above said direction issued by this Tribunal but is also counterproductive in promoting 100 % utilization of fly ash.

3. The applicant has further pleaded that Thermal Power Plants are falsely claiming 100 % utilization of fly ash by manipulation of statistics by adding ash used for Dykes and Bund formation to the actual consumption of fly ash. Thermal Power Plants (TPPs) also convert unused fly ash into slurry and then pump the said ash slurry from its plants for which Thermal Power

Plants have to spend huge money on pumping power cost, cost of water, wear and tear of ash pumping machines and pond maintenance cost etc. Fly ash consumed by user segment, be it cement, concrete or brick manufacturers, saves enormous costs to Thermal Power Plants. The Ministry of Power should encourage Thermal Power Plants to install more fly ash collection silos and put fly ash depots at Urban Growth Centers to cater to the demands of fly ash by brick manufacturing industry and other users.

4. The applicant has also filed I.A No. 110/2022 for grant of ad-interim injunctive relief.

5. Vide order dated 10.05.2022, notices of the original application as well as the interim application were ordered to be issued to the respondents.

6. In compliance thereof, notices have been duly served on the respondents. None has appeared on behalf of respondent no. 2-Niti Aayog despite due service and in view of default in appearance, respondent no. 2 is proceeded against ex-parte.

7. Reply Affidavit dated 01.08.2022 has been filed on behalf of respondent no. 4- Ministry of Power, Union of India vide email dated 04.08.2022 while Counter Affidavit dated 22.08.2022 has been filed by respondent no. 5- Dr. Narla Tata Rao Thermal Power Station.

8. In its reply respondent no. 4 has *inter alia* submitted that respondent no. 1 has issued notification dated 31.12.2021 in supersession of all previous notifications; advisory dated 22.02.2022 has been issued by respondent no. 4 in order to enforce the provisions of notification dated 31.12.2021; over the period of time from 1999 to 2021 in the period of 22 years, the fly ash has now become a valuable commodity and it was felt necessary to monetize the sale of fly ash so that the tariff of electricity is kept as low as possible.

9. In its Counter Affidavit respondent no. 5 has *inter alia* relied upon the advisory dated 22.02.2022 issued by respondent no. 4.

10. Mr. Kumar Rajesh Singh, learned Counsel appearing for respondent no. 1 seeks time to file reply/response to the allegations made in the application. Mr. Gi. Gi. C George learned counsel appearing for respondents no. 3 and 4 seeks time to file Vakalatnama and reply on behalf of respondents no. 3.

11. Requests for adjournment are allowed and Vakalatnama on behalf of respondent No.3 and Reply/response on behalf of respondents No.1 and 3 to the allegations made in the application may be filed within two months at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

12. No reply to the interim application for grant of interim relief has been filed on behalf of any of the respondents.

13. We have heard learned Counsel for the applicant and respondents no. 1, 3, 4 and 5 and gone through the relevant record.

14. In their submissions on the interim application learned Counsel for the applicant and learned Counsel for respondents no. 1, 3, 4 and 5 have reiterated respective stands of the applicant and respondent No.4.

15. This Tribunal had vide *order dated 18.01.2022 passed in O.A No. 164/2018 (earlier O.A No. 276/2013) titled as "Ashwani Kumar Dubey Vs. Union of India and Others* made the following observations regarding management and utilization of fly ash:-

“X                      X                      X                      X                      X  
18. In the light of alarming situation found on verification of  
the ground situation, it is clear that serious violations are

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

**(Emphasis Applied)**

16. In the above said case, this Tribunal had directed constitution of **Fly Ash Management And Utilization Mission** to be jointly headed by the MoEF & CC, Coal and Power, Government of India and Chief Secretaries of U.P and M.P and the relevant part of the order is reproduced as under:

*“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.

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.”



17. A copy of order dated 18.01.2022 passed in O.A No. 164/2018 (earlier O.A No. 276/2013) titled as "Ashwani Kumar Dubey Vs. Union of India and Others" was forwarded to the Secretary, MoP, GoI. Neither there is any averment in reply filed by respondent No.4 nor there is any material on record to show that respondent no. 4 ever approached this Tribunal by filing any application for review for modification of any of its directions or filed any appeal before Hon'ble Supreme Court for setting aside/modifying the same. Therefore, respondent No.4 was bound to comply with the directions given by this Tribunal vide above referred order dated 18.01.2022. In its reply the respondent no. 4 has not referred to the directions issued by this Tribunal and has not mentioned any progress regarding compliance with the same and implementation of the **Fly Ash Management And Utilization Mission** for **much needed speedy utilization/disposal of legacy flyash**. *Prima Facie*, respondent No. 4 seems to be more concerned regarding monetization of the sale of fly ash so that the tariff of electricity is kept as low as possible to benefit the consumers and seems to have ignored the **alarming situation found on verification of the ground situation showing serious environmental violations and failure to prevent air and water pollution by the TPPs resulting in not only denial of fundamental right to clean and healthy environment of those very consumers of electricity but also breach of international treaty obligations of Government of India**. *Prima Facie*, it appears that Advisory dated 22.02.2022 has been issued not only in flagrant violations of the directions given by this Tribunal vide order dated 18.01.2022 passed in O.A No. 164/2018 (earlier O.A No. 276/2013) titled as "Ashwani Kumar Dubey Vs. Union of India and Others" but also without consulting MOEF & CC and without public hearing/inviting objections from Public/persons affected and without taking into consideration the comparative costs of (i) early disposal of fly ash and delayed disposal of fly ash requiring storage till completion of competitive bidding process and (ii) much needed early disposal of legacy fly ash and ten

years spread over disposal of legacy fly ash, not only in terms of money but also in terms of damage to environment caused by air and water pollution and impact on public health and *prima facie* the Advisory dated 22.02.2022, due to its environmental impact, is violative of the statutory mandates of the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Environment Protection Act, 1986 to abate environmental pollution and also offends fundamental right of citizens to healthy and clean environment as well as Constitutional obligations of the State under Article 48A of the Constitution to protect and improve environment and under Article 51 of the constitution to respect and abide by the International Treaties /Conventions.

18. In view of the above discussion, **operation of advisory dated 22.02.2022** issued by respondent no. 4- Ministry of Power, Union of India and **letter dated 16.03.2022** sent by Andhra Pradesh Power Generation Corporation Ltd., through the Chief Engineer/O & M, Dr. Narla Tata Rao Thermal Power Station, Brahimpatnam, Krishna District, A.P to VTPS FABMAS Association, TPS FABMAS Association, Omkar FABMAS Association, SC, ST, BC, Minority FABMAS Association, NTPS FABMAS Association, Amaravathi FABMAS Association, Lakshmi Padmavathi FABMAS Association, Spoorthi Sri FABMAS Association, Sri FABMAS Association, Harshavardhan FABMAS Association **shall not be enforced and shall remain in abeyance till further orders by this Tribunal to the contrary and the interim application is disposed of accordingly.**

19. However, nothing in this interim order shall be treated as expression of any final opinion so far as decision of the original application on merits is concerned.

20. For the purpose of ascertaining the compliance status of the directions given by this Tribunal vide *order dated 18.01.2022 passed in O.A No. 164/2018*

*(earlier O.A No. 276/2013) titled as "Ashwani Kumar Dubey Vs. Union of India and Others,* we consider it appropriate to and accordingly direct respondents no. 1 and 4 to file affidavits, to be sworn by Officers not below the rank of Joint Secretary, from the MoEF & CC and MOP, GOI, giving requisites details regarding compliance with the directions given by this Tribunal within two months at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

21. We also consider personal appearance of the duly authorized/instructed Nodal Officers, not below the rank of Joint Secretary, from the MoEF & CC and MOP, GOI on the next date of hearing through VC or physically to be essential for producing the relevant documents regarding compliance with directions given by this Tribunal and Statutory and Constitutional Mandates and assisting this Tribunal in just and proper adjudication of the questions involved in the case and they are accordingly directed to remain present before this Tribunal on that date.

22. List for further consideration on 14.11.2022.

23. A copy of this order be forwarded to the Secretaries, MoEF & CC and MoP, GoI by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

August 25, 2022  
AG