

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATION No. 19/2014 (WZ)  
AND  
M.A.No.66/2015**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar  
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

**B E T W E E N:**

**Ratandeep Rangari,  
s/o.Lalchand Rangari,**  
Age 36 yrs. Occn : Social Worker,  
R/o.Zenda Chowk, Mahadula,  
Taq. : Kamptee, Distt : Nagpur.

**....Applicant**

**A N D**

- 1. State of Maharashtra,**  
Through : Its Chief Secretary,  
Mantralaya, Nariman Point,  
Mumbai.
- 2. Department of Energy,**  
Govt. of Maharashtra,  
Through : Its Secretary,  
Mantralaya, Nariman Point,  
Mumbai.
- 3. Department of Environment,**  
Govt. of Maharashtra,  
Through : Its Secretary,  
Mantralaya, Nariman Point,  
Mumbai.
- 4. Union Ministry of Power,**  
Through : Secretary,  
Govt. of India, Shram Shanti Bhavan,  
New Delhi – 01.

**5. Union of Ministry of Coal,**

Through : Secretary,  
Govt. of India, Shastri Bhavan,  
New Delhi – 01.

**6. Union of Ministry Environment & Forest,**

Through : Secretary,  
Govt. of India, Paryavaran Bhavan,  
Lodhi Road, New Delhi – 01.

**7. Coal India Ltd.,**

Through its Chairman,  
10, Netaji Subhas Chandra Bose Road,  
Calcutta.

**8. Western Coalfields Ltd.,**

Through : Its Chairman-cum-  
Managing Director, Coal Estate,  
Civil Lines, Nagpur.

**9. Maharashtra State Power Generation  
Company Limited,**

Through : Its Managing Director,  
Prakashgad, Bandra East, Mumbai.

**10. Maharashtra Pollution Control Board,**

Through : Its Member Secretary,  
Kalptaru Point, Opp. Sion Circle, Sion (E)  
Mumbai 400 022.

.....**Respondents**

**Counsel for Applicant :**

Mr. Arpit Ratan, Adv.

**Counsel for Respondent No. 1,2 & 9 :**

Mr. Sanjay Sev, Sr. Adv.

Mr. Rakesh Rathod, Adv.

Matru Gupta, Adv.

**Counsel for Respondent No. 3 :**

Mrs. Supriya Dangre, Adv.

**Counsel for Respondent No.4 :**

Mr. K.D. Ratnaparkhi, Adv.

**Counsel for Respondent No. 7 & 8 :**

Aaishwarya Sinha, Adv.

Mr. S.C. Mehadia, Adv.

**Counsel for Respondent No. 10 :**

Mr. Saurabh Kulkarni, Adv.

Mrs. Supriya Dangre, Adv.

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**DATE : October15th, 2015**

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## **J U D G M E N T**

1. Present Application is filed by Applicant, alleging inaction by Environmental Regulatory Authorities of Ministry of Environment and Forest (MoEF)-i.e. Respondent No.6 and Maharashtra Pollution Control Board (MPCB)-i.e. Respondent No.10, regarding violation of the terms and conditions of consent to operate granted to the Coal Based Thermal Power Plants of Respondent No.9 i.e. Maharashtra State Power Generation Company Limited (MAHAGENCO) and the resultant environmental pollution. The Applicant claims to be native of village Mahadula, Tq. Kamptee, District Nagpur and claims that his village is affected due to air pollution resulting from the nearby coal based power stations of Respondent No.9. The Applicant submits that the Vidarbha region of the State already has largest power generation capacity in Maharashtra, with more than 40,000 megawatt coal based power generation plants being operated and planned in Vidarbha. He submits that such a large scale power generation, concentrated over the Vidarbha region, which would primarily be consuming the coal mined from the coal mines of Respondent No.8-Western Coalfields Limited (WCL) and also, some other mines of Respondent No.7 i.e. Coal India Ltd., would cause severe environmental degradation if the environmental norms are not strictly enforced.

2. The Applicant claims that the coal supplied by Respondent Nos.7 and 8 (hereinafter collectively called as “Coal Companies”) to Respondent No.9 (MAHAGENCO) is in violation of Environmental (Protection) Rules as well as consent granted by the MPCB. He relies on Rule 3(8) of the Environment Protection Rules, 1986 as amended by MoEF notification dated 2<sup>nd</sup> January, 2014 which has stipulated maximum coal ash content of 34% on annual average basis, for such coal based thermal power plants. He further submits that the information collected under RTI from the Respondent No.9 clearly indicates that Power Generation Companies (MAHAGENCO) are consistently and regularly using the coal predominately procured from the coal companies (Respondent Nos.7 & 8) having coal ash content much more than mandatory requirement, below 34 per cent. He also claims that Respondent Nos.6 and 10 are aware of such non-compliance and in spite of stipulated specific condition in the consent to operate, granted to the thermal power plants, Respondent No.10-MPCB has not taken any action against such non-compliances. The Applicant argues that such high ash content in the coal, not only results in poor power plant performance, high cost of operation and maintenance and ash disposal problems, but also, finally results in higher stack air emissions causing environmental pollution. He, therefore, claims that such blatant violation of

environmental norms by Respondent Nos.7, 8 and 9 and also inaction on the part of Respondent Nos.6 and 10 is resulting in environmental pollution in the form of air emissions as well as ash disposal problems.

**3.** The Applicant therefore has prayed for the following reliefs :-

- i) To direct the Respondents to adopt clean technology in all thermal power plants within state of Maharashtra in accordance with norms and particular as per Ministry of Environment and Forest notification dated 02-01-2014 to entirely prohibit use of coal with more than 34 % ash content or comply with the terms and conditions of the consent to operate the plants.
- ii) To direct the Respondent Nos.3, 6 and 10 to assess the damage caused to the environment in the Vidarbha region due to the operation of power plants by Respondent No.9, in violation of terms and conditions of consent to operate or of any statutory mandates.
- iii) To stop operations of the power generation plants using coal as fuel till measures are taken in view of terms and conditions laid down by pollution control board to operate and to adopt clean coal technologies.

**4.** Respondent Nos.6, 7, 8, 9 and 10 are the main contesting parties in this Application. Respondent Nos.7 and 8 have filed their reply-affidavit dated 20<sup>th</sup> April 2014 and submit that the present Application is devoid of any merits and is therefore, liable to be rejected and dismissed.

It is submitted that one PIL bearing No.93/2012 is pending before the Nagpur Bench of Hon'ble High Court of Judicature at Bombay, wherein identical issues have been raised by the Petitioners. The Hon'ble High Court vide its order dated 6<sup>th</sup> March 2014 refused to entertain the issue of coal ash content on the ground that similar issue, pertaining to quality of coal being supplied by Respondents and the procedure adopted for sampling of coal being supplied, is pending before the Competition Appellate Tribunal. To avoid multiplicity of proceedings and divergent opinion by two different judicial forums, the Hon'ble High Court did not entertain the said issue. The Respondents submit that the primary allegation of Applicant is that Respondents have been supplying coal with high ash content to MAHAGENCO, and this allegation is entirely based on the reports of coal analysis provided by MAHAGENCO. The Respondents submit that MAHAGENCO is procuring coal from different sources and not solely from the Respondents and therefore, unless such data of segregated sources is analysed and compared, such allegations do not deserve any consideration. Further, Respondents submit that the order of Competition Commission of India has been appealed before the Competition Appellate Tribunal and *status-quo* has been granted. In view of the above, the Respondents claim that the Applicant is engaged in forum

shopping to get convenient judicial orders for certain obvious reasons by abusing the process of Law.

**5.** Respondents Nos.7 and 8 further claim that the report on coal ash contents at MAHAGENCO which is prepared by Central Institute of Mining Fuel Research (CIMFR) has been elaborately dealt with in the order dated 6<sup>th</sup> March 2014 of Hon'ble High Court, wherein said report has been summarily rejected. The Respondents have claimed that the CIMFR is neither well equipped for conducting proper sampling of coal nor they have necessary equipments and expertise to conduct the analysis of the coal. The Respondents claim that there are notified Indian standards for such sampling and analysis of the coal which are required to be strictly complied with for such coal sampling and analysis. The affidavits further give minute details of such sampling and analysis, also describe the dispute related to such sampling and analysis between the Respondents and MAHAGENCO with particular reference to Fuel Supply Agreement (FSA) and also concept of Gross Calorific Value (GCV). The Respondents claim that the regular joint sampling conducted at the coal discharge locations in the premises of the Respondents, carried out in presence of Respondent Nos.9, would indicate that the ash content of the coal at the coal discharge is consistently seen well below 34 per cent. Further, even the useful heat value of the coal

supplied over three (3) years period i.e. 2009 to 2012 in the terms of joint sampling report is constantly higher than the required value of 3056 kcal/kg. The Respondents therefore, claim that they are fully complying with the environmental norms since beginning, though the notification of 2<sup>nd</sup> January 2014 has only recently entrusted such responsibility on the Respondents i.e. at supply end and therefore, if any non compliance is observed at the thermal power plants of the Respondent No.9, they cannot be held responsible for such non compliances.

**6.** The Respondents further submit that they are Government Company and are strictly following the Rules and Regulations framed by the Government. The Respondent Nos.7 and 8 further submit reply to the submissions made by Respondent No.9 dated 3<sup>rd</sup> July 2014 vide affidavit filed on 5<sup>th</sup> August 2014 and further submitted the written notes of argument on 25<sup>th</sup> September 2014. It is submitted that they have already received the instructions from the CPCB vide communication dated 4<sup>th</sup> February 2014 directing them to implement and comply the notification dated 2<sup>nd</sup> January 2014 in respect of use of washed, blended or beneficiated coal in the thermal power plants, which they are complying. Further, the Respondents claim that M/s. MAHAGENCO-Respondent No.9 had also filed a statutory



complaint against the Respondents for alleged supply of inferior quality of coal from some of its mines. The statutory authority i.e. Coal Controller had investigated such complaints and given its report on 5<sup>th</sup> April 2014 which is on record, to indicate that the ash content at the alleged mines is well within the prescribed limits.

**7.** Respondent No.9- MAHAGENCO filed its reply affidavit on 5<sup>th</sup> July 2014 and raised preliminary objections claiming that the contents in the Application have been made to promote certain vested interest. Further, bunch of P.I.Ls. viz P.I.L. No.41/2012, P.I.L. No.11/2012, P.I.L. No.93/2012, P.I.L. No.125/2013 and P.I.L. No.36/2011 are pending before the Hon'ble High Court of Bombay, Bench at Nagpur, raising similar issues of quality of coal and consequential environmental hazards. Respondent No.9 further alleges that they cater only around 40 % of the requirement of electricity of the State and rest of the electricity requirement is generated by other Power Companies which have not been joined deliberately by the Applicants.

**8.** Respondent No.9 submits that the present Application relates to environmental hazards due to supply and use of poor quality of coal with which it has no direct concern. It is further submitted that coal is a commodity which is nationalised and controlled by M/s. Coal India Ltd. under the administrative control of Ministry of Coal,

Government of India. As a consumer of the coal, Respondent No.9 do not have any control over the quality of coal which is mined by M/s. Coal India Ltd. and its subsidiaries. Respondent No.9 further submits that they do not have any choice or say in selection of the mine, from which the coal is procured, as the Government of India in the Ministry of coal, decides the coal linkage to the individual power plant. Respondent No.9 further submits that it had approached Coal Controller of India to agitate the issue of inferior quality of coal which is supplied by the Coal companies. Respondent No.9 had also initiated proceedings before the Competition Commission of India against the coal companies for abuse of dominating position with respect to the supply of coal. It is submitted that the order passed by the Competition Commission of India was challenged before the Appellate authority which stayed the order and matter is *sub-judice*.

**9.** Respondent No.9 submitted the details of coal procured from different subsidiaries of coal India and submitted that Respondent Nos.7 and 8 regulate all the policy matters relating to production and distribution of coal and even, all the contracts between the coal companies and the coal consumers like power plant are approved by M/s. Coal India. Respondent No.9 states that under the existing legal, regulatory and policy regime, it is compelled to procure most of its coal from Respondent

Coal India Ltd. The coal is the major raw material for generation of power and the factors like availability of coal, its quality and pricing have severe impact upon power generation, plant availability, quality of power supply, power tariff and environment. Respondent No.9 further states that the power generating stations of Respondent No.9 perform at lower power generation output levels due to inferior quality of coal having high ash percentage (%) resulting into financial losses. The poor quality of coal hampers the efficient and consistent performance of the power generating stations and also adds to power generation cost due to higher ash handling. Further, all these aspects increase rate of deterioration and erosion of the equipment, particularly boiler and its tubes and other mechanical equipment which, in turn, reduces the availability of power generating units. In short, it is the case of Respondent No.9 that coal companies are responsible for providing and supplying high ash coal which is not only affecting the environment, but also the overall plant efficiency and performance.

**10.** Further, Respondent No.9 gave elaborate account of the efforts taken by it to address such conflict with coal companies with reference to the fuel supply agreement (FSA) by appointing independent agencies as well as joint sampling of the coal. Respondent No.9 further states that in view of the consistent supply of high ash coal, it had

taken initiative to use washed coal. However, this experiment was also not successful as the beneficiated coal was also not up to the mark, due high ash content and therefore, Respondent No.9 had to discontinue such practice. Respondent No.9 further states that, in the meantime, they had resorted to blending of domestic coal received from the Coal companies with the imported low ash coal so as to achieve desired calorific value and the permissible ash content, as they have found this alternative, more practical, rational and implementable, in order to achieve the environmental norms, on one side, and to ensure better and optimum plant performance, on the other side. Respondent No.9, therefore, submits that though they are not being supplied with the desired quality of coal by the coal companies, they are complying with the regulations by resorting to blending of imported low ash coal.

**11.** Respondent No.9 further states that it had taken several initiatives to control the air emissions, in spite of supply of coal with high ash content by the Coal Companies, including ensuring availability of maximum ESP fields, ammonia dosing, etc in order to reduce the air emissions. Further, it has taken initiatives for dry ash collection to facilitate effective utilisation of fly ash in cement plants as well as other construction activities. Respondent No.9, therefore, claims that the allegations

made in the Application are not correct and they are complying with the Notification as well as the consent conditions of MPCB and prays for dismissal of the Application.

**12.** Respondent No.10 i.e. MPCB filed an affidavit dated 21<sup>st</sup> April 2014. MPCB submits that MPCB has already imposed necessary condition in the consents granted to coal based thermal power plants to use coal with maximum ash content only up to 34 %, so as to ensure that they are complying that various air emission standards prescribed in the consent. As far as coal mines are concerned, MPCB submits that coal being a product of the coal mines, they have a limited control and cannot directly impose such a condition for sale of beneficiated coal to thermal power plant, within the ambit of Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981. MPCB therefore states that it would be necessary for the authorities granting environmental clearance to such coal mines to impose the condition or suitable directions are required to be issued under Environmental (Protection) Act, 1986. MPCB further submits that initially, vide notification dated 19<sup>th</sup> September 1997, the MoEF had made it mandatory for all coal based thermal power plants to use the beneficiated coal with ash content not exceeding 34% with effect from 1<sup>st</sup> June 2001 onwards which was

subsequently extended and thereafter, the notification lapsed as the notification was time bound. MPCB further submits that though it has imposed the necessary condition for use of beneficiated coal in the consents granted to coal based thermal power plants, the MPCB has no control, what so ever, in respect of ensuring the supply of beneficiated coal as the coal linkages to these power plants is an independent activity, carried out by Ministry of Coal and other competent authorities.

**13.** MPCB further submits that after going through the results of stack air emissions from the coal based thermal power plants of Respondent No.9, it is observed that the stack air emissions are regularly exceeding the standards prescribed for the Total Particulate Matter (TPM). MPCB further states that one of the reason for such excessive air emission is the use of coal having ash content more than 34% and the use of high ash containing coal will affect and reduce the efficiency of air pollution control devices, thereby emitting air pollutants, more particularly, particulate matter, in excessive concentrations over the prescribed standards, in spite of the advance pollution control devices provided by these coal based thermal power plants. MPCB has further elaborated various actions taken against the individual thermal power plants and also states that the Board will initiate further stringent legal action on the basis of monitoring results.

Additional affidavit is filed by MPCB on 3<sup>rd</sup> July 2014 and MPCB states that the CPCB had communicated the said notification to the State Board vide letter dated 4<sup>th</sup> February 2014 and suggested that the consents issued to such power plants and mines shall be amended to incorporate the norms as prescribed in notification dated 2<sup>nd</sup> January 2014.

**14.** Ministry of environment has filed reply affidavit dated 18<sup>th</sup> November, 2014 and submitted an Office Memorandum dated 25<sup>th</sup> September, 2014 regarding the compliance of the same Notification. MoEF states that it has directed all the thermal power plants to submit their compliances to MoEF and SPCB concerned and further the Ministry's Regional Offices and SPCB shall ensure the compliances and in case of non-compliance, the same is required to be brought to the notice of MoEF and CPCB. Subsequently, additional affidavits were filed on 22<sup>nd</sup> December, 2014, 20<sup>th</sup> February, 2015 and 20<sup>th</sup> April 2015 which are essentially in compliance of the Tribunal's interim directions. Ministry has also placed on record two (2) communications dated 13<sup>th</sup> April 2015 wherein advisories regarding implementation of the subject notifications were issued. These Office Memorandums also mandate self compliance reports by the coal companies and the thermal power plants. However, no enforcement mechanism through the regulatory agencies was outlined.

After final arguments were completed on 17<sup>th</sup> August, 2015, the MoEF has placed on record the office memorandum dated 26<sup>th</sup> August 2015 as regards the monitoring protocol.

**15.** Respondent No.4 i.e. Ministry of power filed reply affidavit on 26<sup>th</sup> September 2014 and stated that the Application has not raised any grievances against Respondent No.4 and therefore, they may be dropped from the proceedings. It has very limited scope or limited role in the present Application and therefore, its reply affidavit is not necessary for final adjudication of the Application.

**16.** Considering the record of the Application and Affidavits filed by the contesting parties, we are of the opinion that following issues are required to be decided for the final adjudication of the matter :

- 1)** Whether the Application is barred by applying principle of Res-judicata due to proceedings before the Competition Appellate Tribunal as well as P.I.Ls. before the Hon'ble High Court ?
- 2)** Whether the notification of 2<sup>nd</sup> January 2014 is being implemented effectively by the concerned regulatory authority ?
- 3)** Whether the enforcement and compliances regime has been put in place to implement the Govt. of India Notification dated 2<sup>nd</sup> January 2014 ?

**17.** The Applicant has filed this Application with certain specific prayers which are enumerated earlier. The main prayer is regarding directions to the Respondents to adopt



clean (green) technology in all thermal power plants within State of Maharashtra, in accordance with the norms and conditions stipulated in the MoEF Notification dated 2<sup>nd</sup> January, 2004, to entirely prohibit the use of coal with more than 34 % ash content and to comply with the terms and conditions of consent to operate granted to these plants. The other prayers are related to assessment of damages and other consequential reliefs. In this context, it would be relevant to reproduce operating part of the notification dated 2<sup>nd</sup> January, 2014 to understand the present litigation, which is as under:

G.S.R.02(E)-----

1. -----

2. In the Environment (Protection) Rules, 1986, in rule 3, for sub-rule (8), the following sub-rule shall be substituted, namely.

“(8) With effect from the date specified hereunder, the following coal based thermal power plants **shall be supplied with, and shall use, raw or blended or beneficiated coal with ash content not exceeding thirty-four per cent, on quarterly average basis,** namely :-

- (a) a stand-alone thermal power plant (of any capacity), or a captive thermal power plant of installed capacity of 100 MW or above, located beyond 1000 kilometres from the pit-head or, in an urban area or an ecologically sensitive area or a critically polluted industrial area, irrespective of its distance from the pit-head, except a pit-head power plant, with immediate effect;
- (b) a stand-alone thermal power plant (of any capacity) or captive thermal power plant of installed capacity of 100 MW or above, located between 750 – 1000 kilometres from the pit-head, with effect from the 1<sup>st</sup> day of January, 2015,
- (c) a stand-alone thermal power plant (of any capacity) or a captive thermal power plant of installed capacity of 100 MW or above, located between 500-749 kilometres from the pit-head, with effect from the 5<sup>th</sup> day of June, 2016,
  - Provided that in respect of a thermal power plant using Circulating Fluidised Bed Combustion or Atmosphere Fluidised Bed Combustion or Pressurized Fluidised Bed Combustion or Integrated Gasification Combined Cycle technologies or any other clean technologies as may be notified by the Central Government in the official

Gazette, the provisions of clauses (a),(b) and (c) shall not be applicable.

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**18.** While opposing the Application, the Respondent Nos.7, 8 and 9 have contended that there is ongoing proceeding before the Competition Appellate Tribunal and therefore the matter is *sub-judice*. Their second contention is that there are certain PILs, particularly No.93/2012 in the Hon'ble High Court of judicature at Bombay, Bench at Nagpur where similar issues have been raised and that matter is also *sub-judice*. They therefore, contended that the Tribunal should not entertain this Application in view of ongoing litigations to avoid conflict of opinion.

**19.** We have carefully gone through the contentions of Respondent Nos.7 and 8 (Coal Companies) and Respondent No.9 (MAHAGENCO) and also the documents available on record including orders of the Hon'ble High Court, Bombay, dated 6<sup>th</sup> March 2014 in particular.

**20.** The National Green Tribunal Act 2010 bestows specific powers on the National Green Tribunal to deal with certain matters, more particularly related to adjudication to settle environmental disputes. Section 14 of the NGT Act which empowers the Tribunal to handle such disputes is reproduced for clarity :-

**Section 14 of NGT Act** : Tribunal to settle disputes.—

1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to

environment), is involved and such question arises out of the implementation of the enactments specified in Schedule 1.

2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose :

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

**21.** Further section 33 of the Act is related to overriding effect which is reproduced :-

33. Act to have overriding effect.-- The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

**22.** It is observed from the prayers that the main prayer is related to implementation of MoEF Notification dated 2<sup>nd</sup> January 2014, issued under the provisions of the Environment (Protection) Act, 1986. The prayer also do not restrict to a specific power plant but deals with all thermal power plants within State of Maharashtra. A mere reading of the prayer along with Section 14 of the National Green Tribunal Act, would reveal that the present Application is related to effective implementation of the MoEF Notification dated 2<sup>nd</sup> January 2014 which restrict the ash content in the coal to 34 per cent (%). It is manifest that this particular dispute squarely falls within the ambit and scope in Section 14(1) of the N.G.T. Act as the said Notification is issued under the Environment (Protection)

Act, 1986 which is one of the enactments mentioned in Schedule 1 of the NGT Act and the present dispute i.e. implementation of the enactment is directly related to environment as the excessive ash content in the coal leads to air, water and soil pollution, if not handled properly and adequately and therefore, this particular Application falls within the ambit of Section 14(1) of the NGT Act.

**23.** Now, referring to the PIL No.93/2012, the orders of the Hon'ble High Court of judicature at Bombay, Bench at Nagpur dated 6<sup>th</sup> March, 2014 are very relevant and needs to be carefully read. In para 3 of the Order, it is mentioned that one of the relevant contention is that, the Court should direct Respondent No.1-State of Maharashtra and Respondent Nos.2 and 3-Union of India, to act in consonance with the directives issued by His Excellency, President of India to ensure the supply of 80 % of domestic coal to the power generating companies. The other relief is for direction to Respondent Nos.1 to 3 to frame regulatory measures and consequential regulatory mechanism or a high power committee for resolution of dispute between Respondent Nos.4 and 6 on one hand and Respondent Nos.5 and 7 on the other hand. Certain other reliefs are also mentioned in the order like adoption of appropriate measures for storage of coal in order to protect quality of coal during rainy season and further to inculcate a pollution free transport mechanism. Hon'ble High Court

further dealt with the matter in detail and in para 13 dealt with the dispute between the power generation companies and the coal companies which are lying at the competition Appellate Tribunal. Hon'ble High Court further elaborated the scope of the petition in para 14 and 15 are reproduced below :-

14. *We make it clear that hereinafter we will not deal with the issues which are inter se between the MAHAGENCo on one hand and Coal India Limited and WCL on the other hand.*

15. *We will entertain the petition only insofar as the issue regarding import of coal by MAHAGENCO at an exorbitant price, short lifting by them and the measures to be taken by them for providing electricity by avoiding wastage of public money and at reasonable price to the consumers.*

**24.** It is manifest from the above order of the Hon'ble High Court that the Writ Petition is related to certain dispute related to import of coal and its costing and also the pricing of the electricity. It is implied from the order that the *interse* dispute between the MAHAGENCO and Coal India has been left to the Competition Commission for its redressal.

**25.** The issues raised in the present Application are altogether different from the above mentioned issues, as they are mainly related to the implementation of the MoEF Notification dated 2<sup>nd</sup> January 2014 issued under provisions of Environment (Protection) Act, 1986, which is not a subject matter of challenge before the Hon'ble High Court on the competition commission. Further, the

Applicant also prayed for strict enforcement of consent to operate granted to the power plants. In view of all the above, we are of the considered opinion that the issues raised in the present Application are different and are not covered by the Writ Petition before the Hon'ble High Court, nor the Competition Appellate Tribunal. The issues in the present Application are related to implementation of a Notification issued under Environmental (Protection) Act 1986, and the consequential pollution which is apprehended in case of the non-compliance. This Application cannot be treated as an inter-party dispute between MAHAGENCO and the Coal Companies, in any manner, as the Notification covers all the Coal mining/supply Companies as well as Thermal Power Plants across the country, vide stipulated norms for ash content in the Coal in order to protect the environment. The issue No.1 is, therefore, answered in the NEGATIVE.

**ISSUE NOs.2 & 3 :**

**26.** Before entering into thickets of both the issues, it would be relevant to understand the background, complexity and importance of the said Notification in terms of Environmental Protection. With the increased use and consumption of electricity in the country which is generally taken as a direct indicator of human development, more and more emphasis is being placed by Government of India to increase power generation in the

country. India, being the country with 5<sup>th</sup> (fifth) largest coal resources, with a cumulative projected coal resources of about 301.56 billion tones of geological resources of coal (Source : Ministry of Coal website), more emphasis is naturally on the coal based thermal power plants. It is well documented that the typically, Indian coal is characterised as per following quality aspects :-

- Lower to medium grade coal (heat/calorific value).
- High ash content.
- Low moisture
- Low sulphur.

**27.** While the sulphur content in Indian coal does not pose a serious threat in terms of coal quality, the focus always lies on balancing the demand and supply of coal whereby the proper combination of terms of coal grade and ash content is worked out while providing maximum yield to both the stakeholders i.e. coal mine and power plant. The coal grades have been stipulated by the Ministry of Coal based on its useful heat value and gross calorific value in (A) to (G) grades. It is also well documented that with the sudden increase in the thermal power generation capacity, the coal mines face a challenge of sufficient coal supplies of the required grade and some of the relevant operating issues in coal mining could be due to increased production from lower coal bearing seams and enhanced production from open cast mines resulting in larger dirt and foreign material.

**28.** Respondent No.9 has elaborately described the adverse effects of such high ash content in the coal on the coal based thermal power plants, ranging from operational issues, generation costs, performance of plant and pollution. It is stated that with the high ash content, associated with lower calorific value and presence of extraneous matter, the quality of coal usually vary significantly from the design parameters, resulting in adverse effects on thermal power plant performance in terms of specific energy generation and peaking generating capacity. Increased plant outage in terms of tube leakage, have been reported. The maintenance costs in terms of transportation of ash, separation of the ash from the flue gases and disposal of ash goes up abnormally high. It is also stated that such high ash content in coal needs excessive air pollution systems and in spite of provision of advanced air pollution control equipment like ESPs, the issues related to higher stack air emissions still persists. The MPCB has also corroborated such a stand of Respondent No.9. We have elaborately described such contentions of Respondent No.9 to highlight the issues associated with higher ash content in coal in the operation of coal based thermal power plant as they are already well documented in literature, though the scale and scope of such contentions in respect of power plants of



Respondent-9 are not being specifically commented upon by this Tribunal.

**29.** The MPCB has also stated that the Stack air emission levels at the coal based power plants of Respondent No.9- MAHAGENCO are regularly exceeding the prescribed standards consistently over a substantial long period of monitoring.

**30.** As per the report of the Central Electricity Authority, All India yearly coal consumption for power generation for the year 2013 is about 454.60 million tones.

**31.** Now, coming to the Notification dated 2<sup>nd</sup> January 2014, it is observed that the Notification covers both the 'supply' as well as 'demand' side of the coal i.e. supply of coal by coal mines and/or companies on one side and user of coal i.e. power generation companies, on the other. Both these sectors are required to ensure that the coal, being supplied or used, shall not have ash content more than 34 %. Another important aspect of the notification is that the norms are stipulated which are to be complied on 'quarterly basis'. This particular provision would entail development of statistical protocol by all stake holders including MoEF, CPCB, coal companies and power plants.

**32.** It is submitted by MPCB that as early as in the year 2007, similar Notification was issued which was to be effective from 2011 wherein only 'use' of beneficiated coal

with ash content not more than 34 % was made mandatory for the coal based thermal power plants. Accordingly, MPCB has already imposed such a condition to all the coal based thermal power plants as coal is used as fuel in thermal power plants, and MPCB is empowered to specify such standards under the powers conferred by Air (Prevention and Control) Act 1981. However, MPCB states that MPCB has no power to ensure such a supply of beneficiated coal to thermal power plants. Further, MPCB do not have any control on the quality of coal which is being mined by coal companies and supplied to the power plants. MPCB is, therefore of the view that they have a limited scope in the implementation of this Notification except including the same in the consent granted to thermal power plant.

**33.** During the proceedings of the Application, we had enquired with the MoEF, particularly vide order dated 25<sup>th</sup> September 2014, to clarify the enforcement strategy for this Notification by placing on record what kind of control mechanism is adopted at the source of outlet of open mining when such coal is taken out and being transported for purpose of supply. We had also directed the MoEF to collect such samples of coal for determination of ash content at the source as well as the power plants. It is observed from the proceedings that after many hearings and stringent actions against the MoEF, including notice,

warrant and payment of cost etc. finally the MoEF has submitted an office memorandum dated 26<sup>th</sup> August 2015 wherein such protocol has been formulated.

**34.** Needless to mention here that, the Notification dated 2<sup>nd</sup> January 2014 is a pragmatic and pro-active initiative of the MoEF to ensure generation of 'clean energy' in terms of less ash handling/disposal and stack air emissions. With the annual coal consumption of the country which is in the range of 460 million metric tonnes, even 1% reduction of ash would substantially reduce the ash handling problems besides other co-related benefits. The coal based thermal power plants are single largest source of the particulate emissions besides the green house gases. The important co-benefit of such an initiative would be lesser GHG emissions i.e. lesser carbon footprint in thermal power generation. It is also well documented that the major pollutant observed in urban areas of country is the particulate matter. The Notification is an effort to cover the ash content quality aspect of coal based on the principle of life cycle of the coal, right from its exploration (mining) to use in the thermal power plants.

**35.** Obviously, such an initiative needs to be welcomed but at the same time, such Notification needs to be effectively implemented to achieve the results intended and expected by the law-makers. Otherwise, mere issuance of

such Notification will not suffice the purpose and this Tribunal is of the considered opinion that proper enforcement mechanism, supported with identification of field level enforcement agency, sufficient delegation of powers, capacity building of those agencies in terms of manpower as well as infrastructure and necessary financial support are the essential factors which are required to be considered by the MoEF while issuing such Notification. It is true that some of these aspects may be covered under the policy initiatives but at the same time, the Tribunal will have to look into these aspects in view of the specific provisions of Section 14(1) of the National Green Tribunal Act where the Tribunal is expected to adjudicate on the issues related to “implementation” of the enactments in the schedule of the NGT Act. The Tribunal, therefore, had insisted on such enforcement mechanism through MoEF.

**36.** Another important aspect related to the enforcement mechanism is that both MPCB and the CPCB, which are the technical organizations and are also responsible for implementation of Air (Prevention and Control of Pollution) Act, 1981, have been identified as the enforcement agencies for the said Notification. Both these agencies do not have the necessary sampling and analysis facilities for identification of coal ash contents. We have also taken a judicial note of the fact that though MoEF

officers from its regional offices conduct compliance verification at coal mines as well as power plants, they do not conduct such sampling and analysis. In fact, during the proceedings another important aspect noted was absence of sampling and analysis infrastructure with MoEF. In absence of such capacity with MoEF, CPCB and MPCB, we find it rather difficult that the implementation of the Notification will be really effective to achieve the intended results.

**37.** The question of effective enforcement of regulations, particularly related to environment has been elaborately dealt in various judgments of Hon'ble Supreme court of India as well as NGT. A brief summary of various judicial pronouncements is presented below which would highlight the need of effective enforcement of environmental regulations:

**Importance of implementation of environmental laws in India**

*Mere legislation will not serve the purpose unless and until a proper action is taken for effective implementation towards protecting and preserving the environment. In India there is existence of codified law but we are lacking in implementation part. Time and again it is held by Indian Courts that the executive should take proper steps for implementation and enforcement of laws because as per our constitution, legislature will enact the law whereas judiciary will look after the day to day enforcement of such law and it is the executive who will implement such law in our society.*

*In the case of **Indian Council For Enviro Legal Action v. Union of India** (1996)5SCC 28/the Honøble Supreme Court has held that at para 28 that “The courts are ill-equipped and it is not their function to see day to day enforcement of law. This is an executive function which it is bound to discharge. A public interest litigation like the present, would not have been necessary if the authorities, as well as the people concerned, had voluntarily obeyed and/or complied with the main Notification or if the authorities who were entrusted with*

*the responsibility, had enforced the main Notification. It is play the failure of enforcement of this Notification which has led to the filing of the present petition. The effort of this Court while dealing with public interest litigation relating to environmental issues, is to see that the executive authorities take steps for implementation and enforcement of law. As such the Court has to pass orders and give directions for the protection of the fundamental rights of the people. Passing of appropriate orders requiring the implementation of the law cannot be regarded as the Court having usurped the functions of the Legislature or the Executive. The orders are passed and directions are issued by the Court in discharge of its judicial function namely; to see that if there is a complaint by a petitioner regarding the infringement of any Constitutional or other legal right, as a result of any wrong action or inaction on the part of the State, then such wrong should not be permitted to continue. It is by keeping the aforesaid principles in mind that one has to consider as to what directions should be issued to ensure, in the best possible manner, that the provision of the main Notification which has been issued for preserving the coastal areas are not infringed.”*

*Therefore, according to Supreme Court ruling, it is the executive who will ensure that the directions which have been passed by the courts for protecting and preserving the laws is implemented in a proper sense.*

*In the case of **Laxmi Narain Modi Vs. Union of India (UOI) and Ors [(2014)2SCC417]** the Hon'ble Supreme Court reiterated the importance of implementation of environmental law by issuing directions for effective implementation of law such as Prevention of Cruelty to Animals (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000 and provisions of Environment Protection Act, 1986.*

*Again, in the case of **Iqbal Chaudhary v. State of U.P. and Others 2014 4 AWC4332AlJ** the High Court of ALLAHABAD upheld the principle of importance of implementation of environmental laws by stating at para 15 that “...In the order dated 27.8.2013, the Apex Court reiterated the importance of proper implementation of various legislative provisions by all the State Governments, the State Animal Welfare Boards, Pollution Control Board etc. and the need to scrupulously follow the guidelines issued by the Ministry of Environment and Forest, in compliance of the direction given by it on 10.10.2012. Thereafter, it has directed all the State Governments and the Union Territories and the Committees constituted to strictly follow the above guidelines. Consequently, directions/guidelines were issued to certain States, including State of Uttar Pradesh to implement the provisions of the Act mentioned therein and file an action taken report.”*

*Furthermore, the Supreme court of India **In Re: Noise Pollution - Implementation of the Laws for restricting use of loudspeakers and high volume producing sound systems [(2005)5SCC733]** has emphasised on the point that “there is an equal need of developing mechanism and infrastructure for enforcement of the prevalent laws.”*

*This Hon'ble court further stated that at para 98 "Not that the Legislature and the Executive in India are completely unmindful of the menace of noise pollution. Laws have been enacted and the Rules have been framed by the Executive for carrying on the purposes of the legislation. The real issue is with the implementation of the laws. What is needed is the will to implement the laws."*

*The Hon'ble National Green Tribunal by upholding the ratio of the above mentioned case reiterate in the case of **Dileep B. Navetia v. Union Of India [ National Green Tribunal, Western Zone Bench, Pune, Application No. 2/2014 Decided on 23.09.2014]** that " in the absence of an effective mechanism to enforce and implement the noise standards prescribed under the EP Rules and Motor Vehicles Rules, the noise pollution mainly in urban areas cannot be effectively controlled."*

*Therefore, the will to implement the prevalent law as well as directions of the courts for protecting the mother environment is more important than playing a mere blame game regarding the delegation of power to implement such direction by the executive".*

**38.** Now coming back to the office memorandum dated 26.8.2015 wherein the enforcement protocol has been outlined by MoEF, the para 4 thereof is as under:

4. Amendment in Consent under Air (Prevention and Control of Pollution) Act, 1981 & conditions to Environmental Clearance issued under Environment (Protection) Act, 1986 :

In order to implement the provisions made in the notification, the State Pollution Control Board concerned and Ministry of Environment, Forest & Climate Change shall include a condition with respect of specifying ash content in raw or blended or beneficiated coal to be supplied by the coal mine or company, as applicable, and used by thermal power plants, in the existing consent orders issued under Air (Control of pollution) Act, 1981 and in Environmental Clearance issued under Environment (Protection) Act, 1986 to thermal power plant and coal mine or company, as applicable under the purview of the notification on supply and use of raw or blended or beneficiated coal and shall invariably prescribe to all new thermal power plant and coal mine or company, as applicable, which may otherwise fall under the purview of the said notification".

**39.** It goes without saying that once the SPCB incorporate such condition in the consent granted to both the coal mines as well as the thermal power plants, it becomes incumbent on the State Pollution Control Board

to enforce such a condition by adopting the procedure of sampling and analysis as per the provisions of Air (Prevention and Control of Pollution) Act, 1981, independent of the enforcement mechanism submitted by the MoEF. The SPCB and the CPCB will have to facilitate such functions by upgrading their infrastructure in terms of the sampling and analysis required for the purpose. It is also imperative that this being an initiative of the MoEF, the SPCB/CPCB can seek necessary funds as well as technical manpower, trainings etc. from the MoEF or alternatively, may seek permission of MoEF to use the funds available with them either through Cess or other sources of revenue for such purpose.

**40.** With the above discussions, we partly allow the Application with the following directions :-

- 1)** The SPCB and CPCB shall incorporate the necessary condition for supply/use of required coal quality (standard) in the consent granted to coal mines/companies and coal based thermal power plants as per the MoEF Office Memorandum dated 26<sup>th</sup> August 2015 within a period of one (1) month. MoEF shall co-ordinate with all the State Pollution Control Boards to ensure compliance of this direction and shall submit a compliance report by 1st January, 2016.
- 2)** The SPCBs and CPCB shall develop necessary capacity for sampling and analysis of coal ash content at their respective laboratories as per the relevant Indian standards within a period of six (6)



months. The CPCB shall provide all the technical assistance for such infrastructure development and also provide training to scientific manpower and ensure the compliance of this direction. A compliance report be submitted by 31<sup>st</sup> May, 2016 by CPCB.

- 3) Till the automatic real-time online monitoring system is installed and operated by the Coal companies and the thermal power plants, SPCBs shall take monthly samples for the coal ash content and ensure the compliance of notification. The MoEF Officers while conducting inspection visits to thermal power plants and coal mines shall also conduct such sampling and verify compliance of the notification.

**M.A.No. 66/2015 :**

This Misc. Application has been filed by the MoEF for waiver of adjournment costs imposed on MoEF by order dated 20<sup>th</sup> April 2015. The MoEF has now placed on record an Office Memorandum dated 26<sup>th</sup> August 2015 wherein the enforcement mechanism has been outlined. Cost is waived. We, however, find that there is a need to have more clarity on identification of enforcement agencies, delegation of powers, legal directions to incorporate consent conditions etc. besides assessment of such coal ash content on quarterly basis, which would involve specific and complex monitoring/enforcement techniques supported by statistical handling of data related to coal quantity, ash contents etc. It is not disputed that an effective implementation of any particular Notification would necessarily require an elaborate enforcement strategy including

identification of field level agency, proper delegation of powers, capacity development in terms of infrastructure and man power etc.

We direct the Ministry to incorporate all such requirements while issuing any Notification in future which will go a long way to ensure that the Notifications particularly related to Environment Protection, are properly and effectively implemented to achieve the intended results and do not remain as mere conditions or norms on paper. The adjournment costs so directed are waived in view of the above discussions.

The Misc. Application as well as main Application are disposed of accordingly. No costs.

.....,JM  
(Justice V. R. Kingaonkar)

....., EM  
(Dr. Ajay. A. Deshpande)

**Date : October 15th, 2015**

**ajp**