

Item Nos. 01 to 03

Court No. 1

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

Original Application No. 117/2014

(With reports dated 04.09.2020, 06.09.2020 & 03.11.2020)

Shantanu Sharma Applicant(s)

Versus

Union of India & Ors. Respondent(s)

WITH

Original Application No. 499/2014

Anupam Raghav & Anr. Applicant(s)

Versus

U.O.I. & Ors. Respondent(s)

WITH

Original Application No. 102/2014
(M.A. No. 168/2019, M.A. No. 12/2020,
M.A. No. 13/2020 & M.A. No. 70/2020)

Sandplast (India) Ltd. & Ors. Applicant(s)

Versus

MoEF & Ors. Respondent(s)

Date of hearing: 04.11.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondents: Mr. K.K. Singh, Advocate for MoEF&CC
Mr. Raj Kumar, Advocate for CPCB
Mr. K. M. Nataraj, ASG with Mr. Shailesh Madiyal, Advocate for
NTPC
Mr. Bharat Sangal, Senior Advocate with Ms. Anindita Deka,
Advocate for R-129
Ms. Ranjana Roy Gawai, Advocate in M.A. No. 12/2020 &
13/2020
Mr. Sitiesh Mukherjee, Advocate in M.A. No. 70/2020

ORDER

1. This order is in continuation of order dated 20.11.2018 and subsequent orders in the matter on the subject of management of fly ash generated by the Thermal Power Plants (TPPs).

2. This Tribunal considered the impact of non-utilization and proper disposal of fly ash by the TPPs on air quality, surface water, ground water, health and environment. After considering the notifications issued by the Ministry of Environment and Forest & Climate Change (MoEF&CC) requiring 100% utilization of fly ash by 31.12.2017 and applicable norms for utilization of fly ash, this Tribunal directed preparation of action plans to achieve 100% utilization of fly ash and for its scientific disposal. The Committee comprising MoEF&CC, CPCB and IIT Roorkee was to determine the liability of the TPPs for damages on 'Polluter Pays' principle.

3. We may notice the case set out by the applicant in O.A. No. 117/2014. Other connected matters are identical. Non-utilization and improper disposal of fly ash leads to increase in air pollution and causes severe health problems. It also affects horticulture and agricultural crops. As at present, there is increase in ash pond areas and increased height of ash dykes on account of increase of fly ash. Apart from air pollution, there is pollution of surface water and ground water. Major pollutants in fly ash are Arsenic and Mercury. Both the said pollutants are injurious for the land and the water bodies. Thus, there is need for 100% utilization of fly ash by all possible means such as conversion to ash based products, preventing its washing away or flying in the air.

4. Air pollution and water pollution are continuing against mandate of law for which no remedial action is being taken. MoEF&CC has failed to ensure proper monitoring and compliance mechanism inspite of

issuing notification on the subject. This is resulting in failure to enforce the mandate of law under Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974 and Environment (Protection) Act, 1986 (EP Act), apart from damage caused to the environment and public health. This is infringement of 'Sustainable Development' and 'Precautionary' principles. As a consequence of continuing air and water pollution, 'Polluter Pays' principle also needs to be invoked.

5. Notification dated 14.09.1999 was issued by the MoEF&CC which required use of atleast 25% of the ash for clay bricks or tiles or blocks for use in construction activities. The Delhi High Court vide judgment dated 05.08.2004 in Writ Petition (C) No. 2145/1999 directed the Government to make use of fly ash mandatory in roads apart from using it in bricks for construction. Land, electricity and water is required to be made available for promoting ash based production units. Vide amendment dated 03.11.2009, provision was made for its use in manufacturing of building material and in construction activity to preserve top soil. Since quantum of fly ash has increased, the extent of fly ash required to be used in terms of above notification was also increased.

6. In view of the rising concern on account of failure of efficacy of the measures already taken, a Working Group was constituted by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India. In its report submitted in the year 2011, the said group inter-alia observed that increase in generation of fly ash has led to increase in requirement of land and thus target has to be of 100% utilization as against 60%. The disposal process lacked transparency and it was necessary that each thermal power plant displays complete

information in terms of compliance to environmental norms. Other measures adopted include policy of financial institutions to require compliance of fly ash as a condition for grant of loan and incentives in terms of excise duty. The applicant has also referred to the report jointly published by the World Bank and the Department of Economic Affairs, Govt. of India pointing out the deficiencies in pro-active government policies on the subject.

7. We may now refer to the Notifications on the subject. We have already mentioned that vide Notification dated 14.09.1999, the MoEF&CC issued directions requiring manufacturers of clay bricks or tiles or blocks or construction activities to mix atleast 25% of ash which is to be ensured by the Pollution Control Boards/Committees by canceling the consent order for brick kilns or mining leases. Every thermal power plant was required to make available such ash and phase out dumping and disposal in three years to the extent of 30%, and the remaining in six years. This applied to plants permissions being issued subject to Environmental Clearance prescribing such conditions. The remaining are required to be phased-out in 15 years compliance regarding which made necessary to be furnished to the Central Pollution Control Board and the concerned State Pollution Control Boards/Committees. The Electricity Boards, NTPC and the management of the power plants are to facilitate making available land, electricity and water for manufacturing activities and also to provide access to the ash lifting area and furnish annual implementation report. Manufacturers of ash based products such as cement, blocks, brick panels were to operate as per the guidelines laid down by the Bureau of Indian Standards, Indian Bureau of Mines, Indian Road Congress, Central Building Research Institute, Roorkee, Central Road Research Institute, New Delhi,

Building Materials and Technology Promotion Council, New Delhi, Central Public Works Department, State Public Works Departments and other Central and State Government agencies. The said authorities are to prescribe the use of ash and ash based products in schedules of specifications. Local authorities are to specify such requirement in building bye-laws.

8. Vide Notification dated 27.08.2003, certain amendments were made particularly to the effect that construction agencies were required to use the fly ash to the extent of 100% in a phased manner upto 31.08.2007. Next Notification is dated 03.11.2009, revising the timelines and the period for implementation. The revised timelines apply to the construction agencies as well as thermal power plants as per details mentioned in the said Notification. The said Notification also provided for shifting of the fly ash by filling empty mined voids by stowing.

9. Under the above notification, a Monitoring Committee is to be constituted in every State/Union Territory under the Chairmanship of the Secretary, Department of Environment with representatives from Department of Power, Department of Mining, Road and Building Construction Department and State Pollution Control Board. The Committee is required to deal with any unresolved issue by Dispute Settlement Committee in addition to the monitoring and facilitating the implementation of the notification. Monitoring Committee constituted by the MoEF&CC is to have members from Ministry of Coal, Ministry of Power, Central Pollution Control Board, Central Electricity Authority, Head, Fly Ash Unit of the Department of Science and Technology and Building Material Technology Promotion Council.

10. It is further stated in the affidavit of the MoEF&CC that as per the information received from Central Electricity Authority (CEA), during a meeting, the fly ash generation from 138 thermal power plants is reported to be 163.56 million tons during the year 2012-13. The overall utilization of fly ash was 100.73 million ton, which is about 61.37% of the total fly ash generated. During the year 2012-13, out of 138 (one hundred thirty-eight) thermal power stations for which data was received, 66 (sixty-six) power stations have achieved the targets of fly ash utilization as stipulated in the notification dated 03.11.2009. The remaining 33 (thirty-three) plants have achieved the level of fly ash utilization up to 75%. The 19 (nineteen) plants have achieved the level of fly ash utilization up to 60%.

11. CPCB has given a chart showing progress of fly ash generation and utilization from 1996 to 2012. Some of the State Pollution Control Boards/Committees have filed their affidavits indicating the extents to which utilization of fly ash has taken place.

12. Vide Notification dated 27.01.2016, further amendment was made to the Notification dated 14.09.1999 mainly to the effect that the area within which the fly ash is to be utilized has been increased to 300 kms. The time period to comply with the requirements of 100% utilization of fly ash was extended to 31.12.2017.

13. After due consideration, the Tribunal constituted a joint Committee vide order dated 20.11.2018 to finalise action plan to achieve 100% utilization of fly ash and to determine the amount of damages to be paid for the violation by the TPPs and also directed interim compensation for the TPPs who are failed to dispose of 100% fly ash upto 31.12.2017. The operative part of the order is:-

33. We are of the view that a Joint Committee of the representatives of the Ministry of Environment, Forest and Climate Change, Central Pollution Control Board and IIT Roorkee and any other member considered necessary by MoEF&CC needs to be forthwith constituted to finalize action plan covering all aspects so as to not only achieve 100% utilization of fly ash but also to ensure its scientific and environmentally sound disposal. The Committee will also be required to determine the amount of damages to be paid for the violation of requirement of utilization of fly ash. Needless to say that statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 are entitled to assess and recover damages on ‘Polluter Pay’s Principle’ in exercise of incidental powers to protect environment. The Committee may determine any other allied or incidental issue.

34. Accordingly, we direct constitution of such a Committee by the MoEF&CC forthwith. The Committee may give its report within two months from the date of its assuming charge to the MoEF&CC.

35. The report of the Committee may be complied with by all concerned, subject to any challenge to such report, in accordance with law.

36. Pending submissions of such report, we direct all Thermal Power Stations who have failed to dispose of 100% fly ash up to 31.12.2017, to deposit damages for environment restoration as follows:

Sl. No.	Capacity of the Thermal Power Plant	Cost of damages
1.	Thermal Power Plants upto the capacity of 500 MW	Rs. 1 Crore
2.	Thermal Power Plants upto the capacity of 1000 MW	Rs. 3 Crores
3.	Thermal Power Plants beyond the capacity of 1000 MW	Rs. 5 Crores

37. The above amount may be deposited with the CPCB within one month from today, failing which interest @ 12% p.a. will be payable for the delayed period. The amount may be spent on restoration and restitution of the environment.

38. No damages will be payable by the Thermal Power Plants which have utilized 100% of the ash generated by it in accordance with law up to 31.12.2017 and disposing it in scientific manner. In case, any such claim is found to be false by the Committee, the amount of penalty payable may be up to five times.

39. The MoEF&CC may furnish an action taken report to this Tribunal on or before 31.03.2019 by e-mail at ngt.filing@gmail.com. All the applications are disposed of.”

14. The matter was further considered in light of the order of the Hon'ble Supreme Court dated 13.12.2018 in Diary No. 46100/2018, *Association of Power Producers v. Sandplast (India) Ltd. & Ors.*

15. On the last date i.e. 12.02.2020, the Tribunal reviewed the matter further in the light of the report of the joint Committee filed on 20.12.2019. It was observed:-

“21. Pursuant to order dated 20.11.2018, the joint Committee has filed its report on 20.12.2019 on the subject of action plan to achieve 100% fly ash utilization by the TPPs and liability of the TPPs to pay compensation. The report mentions the meetings held for the purpose and consideration of the enhanced utilization of fly ash by way of Ash based building construction material such bricks/blocks/tiles; road, flyover embankment construction, Development of low- laying areas, Reclamation of abandoned mine voids, Ash utilization as soil conditioners of agriculture. As per CPCB, about 77% of total fly ash generated per annum is utilized. This indicates a gap in terms of 23% which needs immediate action. In terms of legacy waste, the total quantum is 1647 million tonnes as on 31.03.2019.

22. The Committee recommended one year time to achieve 100% utilization of fly ash where the utilization currently was more than 85% and two years for the remaining. The action plans of 118 individual units have been annexed. The compliance status is to be reviewed quarterly and on annual basis. On the subject of environmental compensation, it is recommended that compensation should be imposed only on non-pit head TPPs.”

16. It was further observed that this Tribunal has noticed repeated and continuous defaults by the TPPs resulting in damage to the environment and public health for which compensation has been assessed by the experts under orders of the Tribunal.

In O.A. No. 453/2019, *Anjani Jaiswal vs. Union of India & Ors.*, vide order dated 11.10.2019, this Tribunal considered reports of the MPPCB and UPPCB in respect of pollution by the TPPs in districts Singrauli and Sonebhadra respectively. It was found that damage was being caused to the water bodies including Rihand reservoir, surface and ground water and rivers like Son, Renu, Bijul, Kanhar, Gopad, Pankagan, Kathauta

Kachan, etc. and streams/nalas like Ballia Nala, Chatka Nala, Kahuwa Nala, Tippa Jharia, Dongia Nala, etc. water was contaminated by toxic effluents discharged and was not fit for consumption.

MPPCB furnished its report dated 21.08.2019 recording a finding that pollution was taking place and recommending compensation as follows:

“Details of imposed Environmental compensation

*As per the Environmental Compensation guidelines framed by CPCB in compliance of order 31.08.2018 in O.A. 593/2017 the maximum environmental compensation is Rs. 30,000/- per day of non-compliance. The total amount of **56,08,50,000/- (Fifty Six Crore Eight Lac Fifty thousand rupees)** may be imposed upon the 03 TPP & 08 NCL mining project against the non-compliance of the major notification, direction & recommendations issued since 2014.*

Summary of the days of non-compliance & Environmental compensation therefore is as tabulated below:

S. No.	Thermal power plant & Northern Coalfield Mine	Days of Non-compliance	Environmental Compensation in Rupees @ 30000/day
1.	M/s Essar Power MP Limited, Singrauli, MP	01	30,000/-
2.	M/s Sasan Power Limited, Singrauli, MP	1247	3,74,10,000/-
3.	M/s NTPC, Vindhyachal, Singrauli, MP	1389	4,16,70,000/-
4.	NCL, Nigahi, Singrauli	1825	5,47,50,000/-
5.	NCL, Gorbi Block-B, Singraulli	1843	5,52,90,000/-
6.	NCL, Khadia Project,	1825	5,47,50,000/-
7.	NCL, Amlohri area, Singraulli	2185	6,55,50,000/-
8.	NCL, Bina project	1825	5,47,50,000/-
9.	NCL, Dudhichua area	1825	5,47,50,000/-
10.	NCL, Jayant Project	2455	7,36,50,000/-
11.	NCL, Jhingurda area	2275	6,82,50,000/-

PPCB also found pollution by the TPPs in its report dated 28.08.2019 and compensation was recommended as follows:

“Abridged Status of Environmental Compensation (EC)

S.No.	Name of industry (M/s)	EC in Rs.
1.	NTPC Thermal Power Plant, at Shaktinagar, Sonebhadra (U.P)	27,00,000
2.	Northern Coal Fields Limited (NCL) Project Dudhichua, Sonebhadra (U.P.)	1,30,20,000
3.	Northern Coal Fields Limited (NCL) Project Khadia, Sonebhadra (U.P.)	1,24,80,000
4.	Northern Coal Fields Limited (NCL) Project Krishnashila, Sonebhadra (U.P.)	6,11,40,000
5.	Northern Coal Fields Limited (NCL) Project Bina, Sonebhadra (U.P.)	64,50,000
6.	Northern Coal Fields Limited (NCL) Project Kakri, Sonebhadra (U.P.)	64,50,000
	NTPC Thermal Power Plant at Rihandnagar, Sonebhadra (U.P.)	45,90,000
7.	U.P. Power Corporation Ltd, Thermal Power Plant, Obra, Sonebhadra (U.P.)	6,11,40,000
8.	U.P. Power Corporation Ltd, Thermal Power Plant, Anpara, Sonebhadra (U.P.)	6,11,40,000
10.	LANCO Anpara Power Ltd, Thermal Power Plant, Anpara, Sonebhadra (U.P.)	23,70,000

Apart from recommendation for compensation, the UPPCB also recommended remediation measures and study of carrying capacity as follows:-

“11. Recommendations

In order to suitably address the critical issues of potential concerns to environment in the Singrauli Area, the Committee proposes following Recommendations subject to approval of Hon'ble NGT:

- a. *In keeping with the strict compliance of this referenced Order of Hon'ble NGT, the Statutory Authorities may take note of the findings of this report and ensure appropriate*

action for recovery of Environmental Compensation due to damage caused to environment.

- b. Considering complexity of study components and required expertise in related field / discipline, estimation of environmental damage and cost of remediation be worked out by a consortium of reputed institutions namely National Institute of Hydrology (NIH), Roorkee, National Geophysical Research Institute (NGRI), Hyderabad; National Institute of Occupational Health (NIOH), Ahmedabad; National Botanical Research Institute (NBRI), Lucknow and Indian Institute of Toxicology Research (IITR), Lucknow or such other institutions of repute. U.P. Pollution Control Board and M.P. Pollution Control Board may be nodal agencies for execution of the above activities in their respective jurisdiction.*
- c. Irrigation Department in U.P. State is required to come out with status of silting in the reservoir impacting adversely on the water holding capacity of the reservoir and possible threat (if any) on the structure of the Rihand dam as the latter was designed to hold water column and is expected to practically holding a significant column of silt due to discharge of industrial effluents.*
- d. Environmental carrying capacity in Singrauli area must be worked out to take a decision on new / expansion projects and also to devise an environment friendly strategy on pollution control by the industries in the area.”*

17. The Tribunal also considered the subject of parameters for determining environmental compensation. Apart from the said issues, there was specific consideration with regard to the breach of fly ash dyke of ESSAR Thermal Power Plant and NTPC, Vindhya Nagar at Singrauli, M.P. In O.A. No. 164/2019, with reference to breach of fly ash dyke of ESSAR Thermal Power Plant and NTPC, Vindhya Nagar at Singrauli, M.P., the Committee appointed by this Tribunal headed by Justice Rajes

Kumar, former Judge of Allahabad High Court, in its report dated 03.11.2019 observed:-

“(2) By persuasion and monitoring, the Fly Ash disposal by the Thermal Power Plants has been increased but 100% disposal could not be achieved. Disposal of stocked Fly Ash has not yet been started. An exclusive meeting of the Thermal Power Plants has been held on 22nd October, 2019. The meeting was very successful. Some positive suggestions have come out to deal with the Fly Ash. Copy of the Minutes has already been sent by email. It is stated that the Fly Ash is the main cause of the air pollution in the Singrauli-Sonbhadra area. Since the installation of the Thermal Power Plant(s) from the year 1981 onwards, no sincere effort was made by the Thermal Power Plants for the disposal of Fly Ash. It is only because of the sincere effort made by the Committee and regular monitoring, the Thermal Power Plants have started taking steps for disposal of Fly Ash.

(3) Construction of the Fly Ash Dyke and its maintenance was not found technically sound and proper. Recently, two Fly Ash Dykes – one of ESSAR Thermal Power Plant and another of NTPC, Vindhyanagar were breached, causing heavy environmental damages. The Committee has taken serious note about this happening and has given direction to all Thermal Power Plants to get the certificate of the third party expert about the construction and stability of the Fly Ash Dyeke. The Committee is seriously monitoring.

(4) Since long, the industrial effluents have been drained in the Rihand Reservoir. The Fly the Fly Ash has also been drained by some of the Thermal Power Plants, Ash travelled to the Rihand Reservoir, polluting the water of the Rihand Reservoir, which is only source of water. The committee has taken a very serious note of this issue and directed the U.P. Pollution Control Board to prepare a DPR for de-silting of sludge in order to purify the water and to increase the capacity of the Rihand Reservoir which has been substantially reduced due to drainage of affluents and fly ash.

(8) Shri Ashwani Kumar Dubey has filed one Application seeking the various reliefs on account of the environmental damages being cause by the breach of Fly Ash Dyke of ESSAR Thermal Power Plant. The enquiry in pursuance thereof is going on. Shri Ashwani Kumar Dubey has also filed a second Application seeking various reliefs on account of the breach of the Fly Ash Dyke of NTPC Vindhyanagar causing environmental damages. The enquiry in this regard is going on and is pending.”

18. Finally, the Tribunal passed following operative order:-

“30. We have considered the written submissions filed by the individual TPPs. In view of earlier orders dealing with the contentions of the TPPs, there is no merit in the stand that the said

plants are not liable for 100% fly ash disposal. Difficulties pointed out are of no relevance as the same are to be resolved by the administration and not by the victims of pollution whose rights are being affected. Environment cannot be violated against statutory norms. Violation of statutory notifications needs to be visited sternly in terms of enforcing the same, recovering compensation and prosecuting the violators. Whatever be the individual circumstances, it cannot be a ground to disobey law and to commit criminal offence under the Water Act, Air Act and EP Act. There is no discretion available with this Tribunal to dispense with the mandate of law. Statutory provisions are binding on every TPP without any exception. It is, thus, not necessary to go into the justification or otherwise of such impermissible defence of the TPPs.

31. In view of above, all TPPs must take prompt measures for disposal of both current and accumulated fly ash. In respect of non-compliant TPPs, Polluter Pays principle has to be applied from the cut-off date of 31.12.2017, apart from other statutory consequences for continued violations.

32. Thus, our directions are as follows:-

- a. The TPPs may take prompt steps for scientific disposal of fly ash in accordance with the statutory notification issued by the MoEF&CC under the provisions of EP Act requiring 100% utilization and disposal of fly ash.
- b. For the non-compliant TPPs, environmental compensation needs to be determined w.e.f. the cut-off date of 31.12.2017 as stipulated in the Notification dated 27.01.2016.
- c. CPCB may accordingly compute and levy Environmental Compensation in accordance with the formula referred to above w.r.t. individual TPPs in accordance with law and submit compliance report to this Tribunal before the next date.
- d. CPCB Guidelines of May 2019 for Utilization/Disposal of Fly ash for Reclamation of Low Lying Areas and in Stowing/Back filling of Abandoned Mines/Quarries may be complied.
- e. Task Force of Ministry of Power and Ministry of Coal may recommend list of abandoned mines/quarries for mine back filling purposes to the CPCB. CPCB may notify the same accordingly for use by the TPPs as per applicable guidelines and permission from State PCBs/PCCs.
- f. A Committee comprising of CPCB and IIT Roorkee may assess the environmental damage with regard to the breach sites at Vidhyanchal TPP an Essar TPP in Singrauli area and submit its recommendation within three months. CPCB shall be at liberty to engage any other technical expert for this purpose.

- g. *The Committee comprising of Collector, CPCB and Member Secretary of MP State Pollution Control Board may assess the damage with regard to the breach sites at Vidhyanchal TPP and Essar TPP in Singrauli area to the crop and agricultural productivity and ensure effective restoration/remediation of affected sites within three months.*
- h. *CPCB may ensure implementation of action plans approved by it in accordance with timeline as provided in the statute.*
- i. *A joint Committee comprising of MoEF&CC, CPCB, IIT Roorkee and any other member considered necessary may submit quarterly progress report on recommendations of Expert Committee of Niti Aayog for enhanced utilization of fly ash in various sectors: mines, roads, cement, industries and bricks etc., along with its implementation status.*
- j. *The present order is subject to proceedings pending before the Hon'ble Supreme Court and where stay is operative, this order will not operate till stay continues and thereafter abide by orders of Hon'ble Supreme Court."*

19. Accordingly, compliance reports have been filed by the MoEF&CC, the CPCB and the joint Committees.

20. The report filed by the MoEF&CC on 03.11.2020 with regard to enhanced utilisation of fly ash is that guidelines for disposal/utilization of the fly ash for reclamation of low lying areas and in using of abandoned mines/Quarries, in consultation with Central Pollution Control Board and Central Institute of Mining and Fuel Research, Dhanbad has been published in March, 2019. As per policy decision dated 28.08.2019, restriction on backfilling of fly ash in abandoned mines and low lying areas has been removed. National Highways Authority has given an action plan on 30.09.2019 for enhanced utilization of fly ash. Direction has been issued on 02.03.2020 to Ministry of Power, Ministry of Road Transport & Highways, Ministry of Coal, Ministry of Housing and Urban affairs, Central Pollution Control Board, National Thermal Power Corporation and National Highways Authority of India requesting them to furnish the progress report/action

taken report. Ministry of Coal has submitted ATR via email dated 06.11.2019, 08.04.2020, 03.09.2020 respectively on the recommendations of Expert Committee i.e. “mining companies should share their experience of mines backfilling to enhance fly ash utilisation in this sector”. MoEF & CC has shared the report on fly ash filling experience in CIL mines and also the list of mines identified by Ministry of Coal for fly ash filling with CPCB and Ministry of Power with request to furnish progress report in this regard vide letter dated 27.04.2020. Ministry has issued a reminder letter vide email dated 07.07.2020 to Ministry of Power, Ministry of Road Transport and Highways, Ministry of Housing and Urban affairs, Central Pollution Control Board, National Thermal Power Corporation, National Highways Authority of India requesting to furnish the progress report/action taken report at the earliest.

21. Report of CPCB filed on 04.09.2020 is to the effect that environmental compensation has been computed. Out of 112 plants, two have paid while 102 plants have sought exemption. List of 21 abandoned mines has been finalized for utilization of the fly ash. Action with regard to the directions (f) and (g) is pending finalization. Utilization status for 2018-2019 and 2019-20 has been monitored.

22. A report has been filed by the joint Committee constituted in terms of direction (f) of order dated 12.02.2020 on 06.09.2020 regarding Environmental Compensation for Vidhyanchal TPP and Essar TPP. The assessment of compensation is as follows :-

“3. Damage assessment fir M/s Essar Power MP Ltd & M/s NTPC Vindhnagar

The Committee has assessed the environmental damage based on the available monitoring reports, field reports and literature. The brief on damage cost is as tabulated below:-

<i>Industrial Unit</i>	<i>GHG emission damage cost in Crore Rs.,</i>	<i>Water pollution/environmental property/other damage cost in Crore Rs.</i>	<i>Total In Crore Rs.</i>
<i>M/s Essar Power MP Ltd</i>	<i>0.0711</i>	<i>7.28</i>	<i>7.3511</i>
<i>M/s NTPC Vindh nagar</i>	<i>0.0384</i>	<i>104.13</i>	<i>104.1684</i>

23. The recommendations in the report are as follows:-

“i. Industrial units have engaged professional institute NEERI, Nagpur to assess the damage; the institute needs to assess the site specific long term direct or indirect impact on the flora fauna, human health and consumptive cost.

ii. Industrial units need to comply for 100 % fly ash utilization to avoid such incidence in future.

iii. To install monitoring stations on the affected sites, to continuously monitor the movement of plume underground or the leaching of toxic heavy metals from the sediment

iv. Industrial units need to take care for the health of worker s employed for spill clean-up working.”

24. Second report is by the Committee constituted in terms of direction (g) for assessment of compensation to the crop and agricultural productivity by Vidhyanchal TPP and Essar TPP. The Compensation has been assessed, for which recommendation is as follows:-

“3. Restoration/remediation of the site

a. Restoration of site by M/s Essar Power MP Ltd.

The team of district administration and Madhya Pradesh Pollution Control Board has visited the ash dyke breached data area on 02.02.2020 to physically verify the status of restoration work of the site. The report submitted vide letter no. 1125/RO/PCB2020 dated 17.02.2020 by MPPCB, Singraulli states that the ash spread over the field and water bodies was collected and dumped at ash dyke no. 3. The photographs attached with the report show that ash spread over the fields was removed and site is restored. Copy of the report is enclosed as Annexure-IX. Further after the site collection of ash from the fields by M/s Essar Power MP Ltd., farmers have sown the Kharif crop during this monsoon.

b. Restoration of site by M/s NTPC Vindh nagar

As there was no agricultural activity is in practice inside the NTPC ash dumping area; no crop damage was reported and same was recorded by district administration. As per the status report submitted by M/s NTPC Vindh Nagar on 27.07.2020; the ash spread over the land and in drains and near pond were collected that was about 1 Lac ton. The collection of ash deposited near the Rihand reservoir is delayed due to swampy land and problems of machinery movement, which is likely to be completed by 15-09.2020. The dredging of the affected portion of the Rihand Reservoir is also being started. Copy of the status report submitted by NTPC is enclosed as Annexure-X.”

Recommendation:

- a. *The Essar Power M.P. Ltd. Village Bandhaura, Distt. Singrauli (M.P) shall be directed to compensate for indirect loss of Rabi Crop of Rs. 2014200/-*
- b. *The Essar Power M.P. Ltd. Village Bandhaura, Distt. Singrauli (M.P) may depute an agricultural institute for the assessment of damage to the crop productivity w.r.t. the Kharif and Rabi crop cultivated in 41 Ha of Village Karsualal and Karsuaraja for 2020-21 & 2021-22.”*

25. Let further steps be taken in terms of the above reports subject to the orders of the Hon’ble Supreme Court in matters pending therein. Further progress report may be compiled by the MoEF in terms of direction (i) in the order dated 12.2.2020. CPCB may finalise the issue of compensation determination. We approve the reports of the joint Committees. Recovery of compensation will be as per directions of the Hon’ble Supreme Court wherever there is stay.

M.A. No. 12/2020 and M.A. No. 13/2020 have been filed by Bharat Aluminium Company Limited (BALCO) and Talwandi Sabo Power Limited to submit that their plans have been furnished to the MoEF&CC which should be taken into account by the MoEF&CC. The applications are disposed of.

M.A. No. 70/2020 has been filed by Orissa Power Generation Corporation which is merely to place on record its stand, which is of formal nature. This stand can be dealt with in due course. The application is disposed of.

M.A. No. 168/2019 was filed by the MoEF&CC on 01.07.2019 for extension of time. No further order is necessary on the said application, in view of lapse of time. The application is disposed of.

The CPCB, the MoEF&CC and the joint Committees may file their further status reports with regard to the status as on 30.4.2021 before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The joint Committee is at liberty to take assistance of such other experts as they find necessary.

List for further consideration on 19.05.2021.

A copy of this order be sent to the CPCB, the MoEF&CC and the members of the joint Committees in terms of order dated 12.2.2020 by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 04, 2020
Original Application No. 117/2014
and other connected matters
SN