

Item No. 02

Court No. 1

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

Original Application No. 436/2023  
(I.A. No. 607/2023)

Association of Fly Ash Products  
Manufacturers (AFAPM)

Applicant

Versus

Ministry of Environment, Forest &  
Climate Change & Anr.

Respondent

Date of hearing: 13.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. V.K. Shukla & Mr. Sugam Mishra, Adv.

**ORDER**

1. The applicant has challenged Notification dated 31.12.2021 and Notification dated 30.12.2022 issued by the MoEF&CC on the ground that it is in contravention of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2016 so far as it relates to utilization, transportation and disposal of fly ash in an environmentally sustainable manner and in violation of order of Hon'ble Supreme Court of India dated 10.05.2022 passed in Civil Appeal No. 2947 of 2020, *M/s. Aravali Power Co. Pvt. Ltd. vs. Vedprakash and Anr.*

2. The applicant has further challenged the advisory dated 22.02.2022 issued by the Respondent No. 2 on the ground to be in contravention of Environmental Rules. The Notification has been further challenged on the ground that order passed by the Hon'ble Supreme Court dated 10.05.2022 in Civil Appeal No. 1692-1693 of 2020, *M/s. Aravali Power Co. Pvt. Ltd. vs. Vedprakash and Anr.* wherein it was held:

*"12. In view of the above background, it would be necessary for the MoEF&CC to revisit whether the parameters which have been*

*prescribed by the notification dated 31 December 2021 must be modified taking into account the provisions of the Rules of 2016, to the extent to which the applicability of the Rules is attracted to the utilization, transportation and disposal of fly ash. Besides conducting this exercise, MoEF&CC shall ensure that the enforcement, monitoring, audit and reporting mechanism which is envisaged in paragraphs E(3) and E(5) of the notification dated 31 December 2021 is duly put into place and enforced scrupulously. Unless steps have already been taken to enforce the precautionary steps envisaged in the notification, MoEF&CC shall do so within a period of three months from the date of this judgment. In doing so the precautionary principle shall be followed. The MoEF&CC shall also determine upon due analysis whether any further modification of the notification is necessary to comply with the provisions of the Rules of 2016 noticed above and other cognate legislation, including subordinate legislation bearing on the utilization, transport and disposal of fly ash in an environmentally sustainable manner.*

*xxx .....xxx.....xxx*

*15. We clarify that this judgment shall not be construed as a decision on merits upholding the validity of the notification dated 31 December 2021. Any party aggrieved by the terms of the notification would be at liberty to pursue the remedies which are available in law before the appropriate forum.”*

3. The matter of utilization of fly ash was previously considered in O.A No. 164/2018 and vide order dated 18.01.2022, it was observed as follows:

*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*

*xxx.....xxx.....xxx*

*Another obstacle pointed out is advisory issued by the Ministry of Power dated 22.9.2021 that instead of being given free, fly ash 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 'Fly ash Management and Utilization Mission'. Details follow in later part of the order.*

4. As noted earlier, situation caused by failure of the TPPs to manage fly ash scientifically and to utilize the same within reasonable time is highly detrimental to public health and emergency measures in Mission Mode are required. Even the Notification dated 31.12.2021 recognizes the alarming situations which is clear from the text of the Notification itself quoted below:

*“S.O. 5481(E).—Whereas by notification of the Government of India in the erstwhile Ministry of Environment and Forests vide S.O.763 (E), dated the 14th September, 1999, as amended from time to time, the Central Government, issued directions for restricting the excavation of top soil for manufacturing of bricks and promoting the utilisation of fly ash in the manufacturing of building materials and in construction activity within a specified radius of three hundred kilometres from the coal or lignite based thermal power plants;*

*And whereas, to implement the aforesaid notification more effectively based on the polluter pays principle (PPP) thereby ensuring 100 per cent utilisation of fly ash by the coal or lignite based thermal power plants and for the sustainability of the fly ash management system, the Central Government reviewed the existing notification; and whereas environmental compensation needs to be introduced based on the polluter pays principle;*

5. And this Tribunal constituted a committee as follows:

*(3) A committee shall be constituted under the chairmanship of Chairman, Central Pollution Control Board (CPCB) and having representatives from Ministry of Environment, Forest and Climate Change (MoEFCC), Ministry of Power, Ministry of Mines, Ministry of Coal, Ministry of Road Transport and Highways, Department of Agricultural Research and Education, Institute of Road Congress, National Council for Cement and Building Materials, to examine and review and recommend the eco-friendly ways of utilisation of ash and make inclusion or exclusion or modification in the list of such ways as mentioned in Subparagraph (2) based on technological developments and requests received from stakeholders. The committee may invite State Pollution Control Board or Pollution Control Committee, operators of thermal power plants and mines, cement plants and other stakeholders as and when required for this purpose. Based on the recommendations of the Committee, Ministry of Environment, Forest and Climate Change (MoEFCC) may publish such eco-friendly purpose.*

6. The procedure for supply of ash or ash based products were directed to be monitored and implemented in a following manner:

**“D. Procedure for supply of ash or ash based products.—**

*(1) The owner of thermal power plants or manufacturers of ash bricks or tiles or sintered ash aggregate shall serve written notice to persons or agencies who are liable to utilise ash or ash based products, offering for sale, or transport or both.*

*(2) Persons or user agencies who have been served notices by owner of thermal power plants or manufacturers of ash bricks or tiles or sintered ash aggregate, if they have already tied up with other agencies for the purpose of utilisation of ash or ash products, shall inform the thermal power plant accordingly, if they cannot use any ash or ash products or use reduced quantity.”*

7. Directions were issued to the effect that 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.

8. Learned counsel for the applicant has contended that the guidelines issued has not been enforced and the directions of the Hon'ble Supreme Court of India passed in Writ Petition quoted above to the effect that the MoEF & CC will revisit the parameters as prescribed in the notification and modify according to the provisions of 2016 has not been considered.

9. A substantial question relating to environment has been made out.

10. Since the matter is inter departmental issue which should be amicably dealt with a justified solution meeting the environmental standards, thus the Secretary, Environment and Secretary, Power is directed to submit a joint report with regard to the contentions raised in the application with a viable solution so that 100% utilization of fly ash should be ensured. This may be after due deliberation with the stake holders and the department concerned.

11. Issue notice to the respondents, returnable within four weeks. Respondents are directed to submit their reply within six weeks through E-filing portal, preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

12. Applicant is directed to take necessary steps for service to the respondents by both ways and also on available email.

13. Applicant is directed to supply the copy of the application and relevant documents to the Respondent(s) within a week and after compliance of service, the applicant has to submit an affidavit that the notice and copy of the application have been served upon the respondent(s).

14. List for further consideration on 13.10.2023.

Sheo Kumar Singh, CP

Dr. A. Senthil Vel, EM

July 13, 2023  
Original Application No. 436/2023  
(I.A. No. 607/2023)  
DV