

Item No. 11 (Through VC-Bhopal)

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

Original Application No. 152/2016 (CZ)

Sudiep Shrivastava

Applicant(s)

Versus

State of Chhatisgarh & Ors.

Respondent(s)

Date of hearing: 11.02.2020

CORAM:

**HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s)

Mr. Saurabh Sharma, Advocate

For Respondent(s)

Mr. Rohit Sharma, Advocate for
Mr. Siddharth Chouhan,
Advocate
Ms. Parul Bhadoria, Advocate
Mr. G.S. Bhardwaj, Nodal Officer
Mr. Om Shankar Shrivastava,
Advocate

ORDER

The instant original application has been filed primarily in respect of non-utilization of fly ash which is being generated by respondent-Thermal Power Plants.

At the outset, it has been brought to our notice that an identical question was considered by the larger bench of the Tribunal in *Shantanu Sharma Vs. Union of India & Ors.s* (O.A. No. 117/2014). In the said case following directions were issued:

“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 100 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.”

Therefore, we direct MoEF & CC to proceed in this matter and follow the directions given in the aforesaid case. An action taken report be furnished before the Tribunal by 31.05.2020 by email at ngt-judicial@gov.in.

Accordingly, original application no. 152/2016 (CZ) stands disposed of, with no order as to cost.

Justice Raghuvendra S. Rathore, JM

Dr. Satyawan Singh Garbyal, EM

MN

