

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O.A. No. 24/2014/EZ

With

MA 81/2015/EZ

SUBHAS DATTA

VS

STATE OF WEST BENGAL & ORS

CORAM: **Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: **Applicant : Mr. Subhas Datta, In person**
Respondent No. 1 : None
Respondent No. 2 : Mr. Bikas Kar Gupta, Advocate
Respondent No. 3 : Mr. N.C.Bihani, Advocate
Respondent No. 4 : Mrs. Arpita Chowdhury, Advocate
Respondent No. 5 : None

Date & Remarks	Orders of the Tribunal
Item No. 3 13th July, 2015.	<p>Mr. N.C.Bihani, Id. Advocate appearing for respondent No. 3 has filed status report and respective rejoinders to the reply filed by the State respondents. Let those be kept with the record. Copies have been served. Mr. Bihani appearing for the West Bengal Power Development Corporation Ltd. (respondent No.3) submits that construction of second ash pond has already started. However, in the meantime, some local villagers, whose land is falling where the second ash pond is going to be constructed, have filed respective writ petitions before the Hon'ble High Court seeking injunction.</p> <p>It appears from the affidavit of Mr. Bihani that initially there were three units of 210 MW each capacity of electricity generation. At that time, one ash pond was constructed for depositing ash from the plants with a life of 15 years to accommodate ash. But subsequently two more units of 210 MW each have been allowed to be opened after having proper environmental clearance in the year 2009 when already Environmental Regulations 2006 came into effect. To run further two units, construction of another ash pond must have been considered necessary for which steps are being taken now by the respondent No. 3.</p> <p>However, Id. Advocate has failed to satisfy us from various documents produced before us as to whether any condition was imposed while granting environmental clearance for establishing two other units of 210 MW capacity and whether construction of 2nd ash pond is a condition precedent for operation of the two additional units. Mr. Bihani is directed to produce all necessary documents on the next date to the above effect.</p> <p>Having regard to the submission made by Mr.Bihani it is clear that construction of 2nd ash pond is uncertain and additional two units with capacity of 210 MW each of power generation is also</p>

causing accumulation of huge amount of ash which cannot be accommodated in one ash pond.

Let supplementary affidavit be filed annexing all necessary documents, the environmental clearance for expansion, consent to establish and consent to operate the additional two units in addition to existing three units in the year 2009 for our consideration and passing appropriate orders.

On consideration of the factual matrix of this case, particularly, the fact that construction of 2nd ash pond in near future is out of question, the said respondent must give their reply in the affidavit on the issue as above as also whether the existing ash pond is sufficient to accommodate the coal ash as has been produced due to burning of coal for operation of five units after utilisation of ash, if any. The said respondent will further submit the life of the ash pond that is existing.

Mr. Subhas Datta, the applicant appearing in person submits that the work of lifting of fly ash was not complete and due to monsoon everything have been washed away. He has submitted the topographical condition of the rivers Chandrabhaga and Bakreshwar before us. Mr. Datta and Mr. Bihani, Id.adv. for respondent No. 3 both submit that an expert committee be appointed to inspect the position and submit a report. We are, however, of the opinion that at the moment there is no need to appoint any such expert committee.

Having considered the submission of all parties, we direct the respondent No.3 to submit a reply on the following issues :-

- i) Whether the present ash pond is sufficient to accommodate the entire ash that is being produced due to operation of five units of said Thermal Power Plants of 210 MW per day per unit by burning of coal and whether any condition was stipulated when environment clearance was issued by the competent authority to establish and operate the additional two units. In such case what will be total life of the 1st pond.
- ii) On the issue as of "polluter pay", why the respondent No 3 will not be liable to pay a penalty of Rs.5.0 crores for causing environmental degradation by putting fly ash to the river Chandrabhaga and Bakreshwar and also causing severe injury to the environment and the entire locality and inhabitants thereof and the animals who are dependent on the river water.

Let the affidavit on the above specific issues be also be filed by respondent No. 3 within 10 days. Copy be served on the respective parties. Reply, if any be filed within a 3 days thereafter. Matter is fixed on **27.7.15**.

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Justice Pratap Kumar Ray, JM

Prof. (Dr.) P. C. Mishra, EM

