

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 23246 of 2015 (O&M)
Date of decision: 19.12.2016.**

Naveen Jain

..... Petitioner.

Versus

State of Haryana and others

..... Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr. Gobind Sharma, Advocate, for the petitioner.

Ms. Sonia Madan, Advocate, for
Mr. Raghujeet Madan, Advocate, for respondent No. 10.

S.S. SARON, J.

The petition has been filed in the nature of public interest for directing the respondents to comply with the notification dated 03.11.2009 (Annexure P3) issued by the Ministry of Environment and Forests (MoEF) by incorporating appropriate clauses and conditions in every tender notification as are mentioned in the said notification.

The petitioner claims that he is a public spirited person and is keen to protect and preserve environment and natural resources from being polluted. He states that he is deeply worried about the pollution being spread by thermal power plants situated at Panipat, Hisar and Yamuna Nagar in the State of Haryana. It is stated that fly ash is one of the naturally occurring products from coal combustion process and is a material which is nearly the same as volcanic ash.

In coal and lignite based thermal power plants, electricity power is generated with the help of coal and after burning process, residue fly ash is also generated in a huge quantity. There exists no adequate and sound mechanism for its proper utilization and disposal. Fly ash in fact is a by-product from coal based thermal power plants. It has generally been considered a waste material in the past. The disposal of fly ash has posed ecological and environmental issues. Recent researches have, however, shown that fly ash has potential to act as an invaluable ingredient in cement and concrete if it is used within the framework of prescribed specifications and quality systems. Civil Engineering has now considered it as a resource material rather than waste. Besides, it can be used gainfully for various other applications.

The primary grievance of the petitioner is that fly ash should be utilized in construction work in consonance with the notification dated 03.11.2009 (Annexure P3). Sub-paras (1A) and (1B) of para No.2 of the said notification, which are relevant for the present petition read as under:

“(1A) Every construction agency engaged in the construction of buildings within a radius of hundred kilometers from a coal or lignite based thermal power plant shall use only fly ash based products for construction, such as : cement or concrete, fly ash bricks or blocks or tiles or clay fly ash bricks, blocks or tiles or cement fly ash bricks or bricks or blocks or similar products or a combination or aggregate of them, in every construction project.

(1B) The provisions of sub-paragraph (1A) shall be applicable to all construction agencies of Central or State or Local Government and private or public sector and it shall be the responsibility of the agencies either undertaking construction or approving the design or both to ensure compliance of the provisions of sub-paragraph (1A) and to submit annual returns to the concerned State Pollution Control Board or Pollution Control Committee, as applicable.”

Learned counsel appearing for the petitioner has brought to our notice an order passed by the National Green Tribunal, Principal Bench, New Delhi, in the case; 'Fly Ash Bricks Association v. State of Haryana and others', O.A. No.346 of 2016, M.A. No.643 of 2016 on 12.07.2016. The said order reads as under:

“We have heard the Learned Counsel appearing for the parties. The applicant has prayed in the application that the use of clay bricks be prohibited and secondly the appropriate provision of MoEF Notification dated 3rd November, 2009 should be incorporated in the tender/work orders which are being awarded by the Respondents i.e. all the State Governments and its Public Authorities.

As far as first prayer is concerned, we are unable to persuade ourselves to grant such an absolute relief in the present case. It is difficult to ban complete use of clay bricks. Of course the intent of the Notification dated 3rd November,

2009 is that the same should be reduced and use of fly ash in manufacturing of bricks should be encouraged.

In compliance with the Legislative intent of the Notification, we dispose of this application with the directions that all the Respondents, all the State Governments and Public Authorities which are awarding the contracts for construction would incorporate the provision of the Notification of 3rd November, 2016 particularly Clause 2A of the Notification and would ensure that the use of fly ash in manufacturing of bricks is encouraged in accordance with law and with the intent of the Notification.

Let copy of this order be sent to the Chief Secretaries/Administrators of all the State Government and Union Territory.

With the above directions the Original Application No.346 of 2016 stands disposed of with no order as to cost.

M.A. No.643 of 2016 does not survive for consideration as the main application itself stands disposed of.”

Learned counsel appearing for respondent No. 10 - National Highways Authority of India has submitted that the order passed by the National Green Tribunal, Principal Bench, New Delhi as it stands is to be complied with and in case anybody has any grievance against the same, he has a right to assail the same in accordance with law. It is submitted that the National Highways Authority of India (respondent No.10) reserves its

right to assail the said order in case it is aggrieved against the same.

In view of the order dated 12.07.2016 passed by the National Green Tribunal, Principal Bench, New Delhi, further directions are not liable to be issued as necessary directions have already been issued.

In the circumstances, the writ petition is disposed of. However, *locus standi* of the petitioner to file such petition is kept open. Besides, in case any one is aggrieved of the order passed by the National Green Tribunal, Principal Bench, New Delhi it may, if so advised, assail the same in accordance with law.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

19.12.2016
Ramesh

Note:

1.	Whether reasoned/speaking	:	Yes
2.	Whether reportable	:	No