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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 17.10.2023% **W.P.(C) 1949/2023 and CM APPL. 7440/2023****PUNJAB STATE POWER CORPORATION LIMITED..... Petitioner****Through: Mr. Bharat Sangal, Sr. Adv. with
Ms.Babita Kushwaha, Adv.****versus****UNION OF INDIA THROUGH SECRETARY, MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE****..... Respondent****Through: Mr. Asheesh Jain, CGSC with
Mr.Gaurav Kumar and Mr. Mimansak
Bhardwaj, GP****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. Pertinently, the Petitioner i.e., the Punjab State Power Corporation Limited is a state government owned entity which established and operated 3 (three) thermal power plants ("TPPs"), namely (i) Guru Nanak Dev Thermal Plant, Bhatinda ("GNDTP"); (ii) Guru Gobind Singh Super Thermal Plant, Ropar ("GGSSTP"); (iii) Guru Hargobind Thermal Plant, Lehra Mohabat ("GHTP"). Thereafter, with effect from 01.01.2018, GNDTP was decommissioned and accordingly, the Petitioner now operates 2 (two) TPPs i.e., GGSSTP and GHTP.
2. Aggrieved by the issuance a notification dated 31.12.2021 issued by the Ministry of Environment, Forest and Climate Change (the "MoEF&CC")



or “**Respondent**”), whereunder a comprehensive framework pertaining to the utilization and disposal of ‘fly ash’ by TPPs has been framed (the “**Impugned Notification**”), the Petitioner has preferred this writ petition.

3. Before we proceed, it would be necessary to appreciate the surrounding circumstances which have led to the filing of the present writ petition:

- (a) On 14.09.1999, the Respondent issued a notification bearing number: S.O. 763 (E) directing TPPs to provide ‘fly ash’ free of cost to persons engaged in (i) construction; and (ii) manufacturing of bricks for a period of 10 (ten) years in a bid to curb the harmful impact of untreated ‘fly ash’ on the environment and public health (the “**1999 Notification**”). Thereafter, the 1999 Notification came to be amended from time-to-time with the expectation to ensure 100% (one hundred per cent) utilization of ‘fly ash’.
- (b) Subsequently, the National Green Tribunal (“**NGT**”) vide an order dated 20.11.2018 (the “**First NGT Order**”) in Original Application bearing number 102 of 2014 titled ‘*M/s Sandplast (India) Ltd. & Anr. v. Ministry of Environment Forest & Ors.*’, (the “**OA**”) directed *inter alia* the Respondent; and Central Pollution Control Board (“**CPCB**”); and Indian Institute of Technology (“**IIT**”), Roorkee to constitute a joint committee constituting of representatives of the aforesaid institutions (the “**Committee**”) and finalize an action plan encompassing all aspects pertaining to utilisation and disposal of ‘fly ash’ (the “**Action Plan**”).
- (c) Thereafter, the Petitioner herein preferred an appeal before the Hon’ble Supreme Court of India (“**Supreme Court**”) against the



First NGT Order *vide* a Civil Appeal (“CA”) number 1472 of 2019 titled ‘*Punjab State Power Corporation Ltd. v. Sandplast (India) Ltd.*’ contending that it was not made a party in the underlying OA and accordingly, the Supreme Court *vide* an order dated 28.01.2019 disposed of the aforementioned appeal, granting the Petitioner liberty to file (i) an appropriate application for impleadment in OA before the NGT; and (ii) an application to place on record an affidavit delineating the steps taken by Petitioner in furtherance of the 1999 Notification (the “**First Supreme Court Order**”).

- (d) Accordingly, in furtherance of the First Supreme Court Order, the Petitioner filed application(s) before the NGT. *Vide* an order dated 12.03.2019, the NGT granted the Petitioner liberty to put forward its grievance before the Committee; and extended the time granted to the Committee to furnish its action plan qua the disposal and utilisation of ‘fly ash’ from 31.03.2019 to 31.05.2019 (the “**Second NGT Order**”).
- (e) The Committee held meetings on (i) 18.04.2019; (ii) 17.07.2019; (iii) 18.07.2019; and (iv) 30.09.2019 and thereafter submitted the Action Plan *vide* a report dated 27.01.2020 whereunder *inter alia* TPPs which had already achieved 85% (eighty-five per cent) utilisation of ‘fly ash’ were granted 1 (one) year to achieve 100% (one hundred per cent) utilisation. Furthermore, TPPs wherein utilisation was less than 85% (eighty-five per cent) were granted 2 (two) years to achieve 100% (one hundred per cent) utilisation (the “**Report**”).



- (f) Aggrieved by the aforesaid, the Petitioner filed its objections to the Report before the NGT on 07.02.2020. However, in continuation of the First NGT Order *vide* an order dated 12.02.2020, the NGT directed TPPs to take prompt and proactive steps towards the 100% (one hundred per cent) utilisation and disposal of ‘fly ash’ in terms of the 1999 Notification (as amended from time to time). Furthermore, the NGT reiterated that environmental compensation to be paid by non-complaint TPPS must be determined in accordance with the Respondent’s notification dated 27.01.2016 (the “**Third NGT Order**”).
- (g) Aggrieved, the Petitioner once again, assailed the First NGT Order; and the Third NGT Order before the Supreme Court *vide* a CA bearing number 3210 of 2020 titled ‘**Punjab State Power Corporation Ltd. v. Sandplast (India) Ltd.**’.
- (h) However, in the interregnum pursuant to consultative meetings between various stakeholders including *inter alia* the end-users of ‘fly ash’ and the Government of India, the Draft Provisions of Ash Utilisation dated 22.04.2021 were published by the Respondent *vide* a notification bearing number G.S.R.285(E) dated 22.04.2021 seeking objections and / or suggestions (if any) (the “**Draft Notification**”). Pertinently, the Draft Notification affixed the responsibility of 100% (one hundred per cent) utilisation of ‘fly ash’ on TPPs itself, as more particularly identified under Paragraph A of the Draft Notification.



- (i) Pursuant to the Draft Notification, the Impugned Notification came to be issued *vide* notification bearing number: S.O. 6169 (E) dated 30.12.2022.
 - (j) Pertinently, under Sub-Paragraph 2 of Paragraph A of the Impugned Notification, the primary responsibility of 100% (one hundred per cent) utilisation of ‘fly ash’ is affixed on TPPs. Moreover, the Impugned Notification prescribes certain identified end-use activities which may be employed by TPPs to utilise the ‘fly ash’. Furthermore, Sub-Paragraph 3 of Paragraph A of the Impugned Notification envisages a continuing consultative process between the stakeholders to *inter alia* facilitate the utilisation of ‘fly ash’ in an eco-friendly manner.
 - (k) Certain ancillary aspects of the Impugned Notification came to be raised before the NGT in an Original Application bearing number 164 of 2018 titled ‘*Ashwani Kumar Dubey v. Union of India*’ (the “**Second OA**”). Pertinently *vide* an order dated 18.01.2022, the NGT without expressing any opinion on the correctness of the Impugned Notification, issued *inter alia* certain guidelines and remedial measures to ensure facilitate 100% (one hundred per cent) utilisation of ‘fly ash’ (the “**Fourth NGT Order**”).
4. With aforesaid, we proceed to deal with the present writ petition.
 5. The main thrust of the argument advanced by Mr. Bharat Sangal, learned Senior Counsel appearing on behalf of the Petitioner is that TPPs have been wrongly affixed with the responsibility of 100% (one hundred per cent) utilisation of ‘fly ash’ whereas the actual end-users of ‘fly-ash’



whom undertake activities specified under Sub-Paragraph 2 of Paragraph A of the Impugned Notification for the eco-friendly disposal of ‘fly ash’ are, third-parties who procure ‘fly-ash’ from TPPS. Further, it has been submitted that the Report did not deal with the inability of TPPs to ensure 100% (one hundred per cent) i.e., a grievance that was raised by the Petitioner in its objections filed before the NGT and, accordingly, the Impugned Notification has been issued without proper application of mind.

6. At this juncture, Mr. Asheesh Jain, CGSC appearing on behalf of the Respondents has drawn the attention of this Court to a decision of the Supreme Court in ***Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey***, (2023) 8 SCC 35 whereunder the directions issued by way of the Fourth NGT Order had been challenged. He has submitted that pursuant to ***Singrauli Super Thermal Power Station (Supra)*** the underlying subject matter of the present petition is under consideration before the NGT). The relevant extract is reproduced as under:

“25. We have perused the impugned order [Ashwani Kumar Dubey v. Union of India, 2022 SCC OnLine NGT 120] of the NGT and particularly para “16” which has been extracted above. It is apparent that the appellant(s) herein who were respondents before the NGT were not given an opportunity to file their objections to the recommendations made by the Committee constituted by the NGT which is apparent by the fact that the recommendations were uploaded on 15-1-2022 and the final order [Ashwani Kumar Dubey v. Union of India, 2022 SCC OnLine NGT 120] of the NGT was passed three days later on i.e. 18-1-2022. Thus, this is a clear case of there being non-compliance with the principles of natural justice. On the said ground alone the impugned order [Ashwani Kumar Dubey v.



Union of India, 2022 SCC OnLine NGT 120] is set aside, the matter is remanded to the NGT for re-consideration from the stage of the recommendations filed by the Expert Committee constituted by the NGT. The appellant(s) herein are permitted to file their objections, if they are so advised. The NGT shall consider the objections, if any, filed to the recommendations and thereafter dispose of the applications in accordance with law and after giving a reasonable opportunity to all parties."

7. In the considered opinion of this Court, the dispute before us pertains to intricacies surrounding environmental standards of utilization and disposal of 'fly ash' i.e., a subject matter that requires an in-depth, rigorous and nuanced understanding of the environmental impact of 'fly ash'. Furthermore, it was brought to our notice that the subject matter of the present petition is under consideration before the NGT i.e., a specialised body comprising of subject experts well conversed with scientific principles essential to the effective disposal of disputes having the potential of far-reaching environmental ramifications.
8. Accordingly, we do not deem it appropriate to entertain this writ petition and invite parallel proceedings in relation to the Impugned Notification as the matter is pending before the NGT, an expert adjudicatory body on the environment. The Petitioner is granted liberty to raise its grievance before the NGT if necessary.
9. With the observations above, this writ petition is disposed of.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

OCTOBER 17, 2023

W.P.(C) 1949/2023

Page 7 of 7