



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8531 OF 2025

M/s Kapileshwar Rakhad Kamgaranchi ... **Petitioner**
Abhinav Seva Sahakari Society, Velhale,
Tq. Bhusawal, District Jalgaon
Through its President-
Shri Yogesh Atmaram Patil,
Age 47 years, Occu: Agriculture
At Post Velhale Tq. Bhusawal Dist. Jalgaon

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Industry, Energy and Labour Department,
Mantralaya, Mumbai-32
2. Maharashtra State Power Generation
Company Pvt. Ltd.,
Through its Chief Managing Director,
Prakash gad, Bandra East, Mumbai
3. Maharashtra State Power Generation ... **Respondents**
Company Pvt. Ltd., Urja Bhavan,
Urja Nagar, Bhusawal Thermal Power
Station, Deepnagar, Tq Bhusawal,
District Jalgaon.
Through - its Chief Engineer
4. Phoenix's SSPM Ventures,
Through its Proprietor,
Plot No.18, Gopal Nagar, Behind GST
Bhavan, Sakri Road, Dhule 425 001

Ms. Pradnya Talekar i/by Talekar And Associates, Advocate for the
Petitioner

Mr. V. M. Kagne, AGP for Respondent No.1-State

Mr. Rahul A. Tambe, Advocate for Respondent Nos. 2 and 3
Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. Ajay A. Fulpagar,
Advocate for Respondent No.4

CORAM : MANISH PITALE &
Y. G. KHOBRAGADE, JJ.
DATE : 19th September, 2025.

ORDER:

1. Heard learned counsel for the parties.
2. In this petition, while granting interim relief, restraining the respondents from proceeding further with the impugned sale order dated 30.05.2025, concerning sale of pond ash, from Bhusawal Thermal Power Station of the Respondent-Maharashtra State Power Generation Company Pvt. Ltd (MAHAGENCO), on 16.07.2025, this Court made the following observations:

"3. The Petitioner is a registered society of labourers and project affected persons. Their grievance is that while Respondent Nos.2 and 3 initiated a tender process inviting bids for sale of "Pond Ash" from Taluka Bhusawal, District Jalgaon, wherein, the Petitioner society and others submitted their bids, instead of taking the said tender process to its logical end, a simple application of Respondent No.4 dated 26.02.2025 was acted upon by Respondent Nos.2 and 3 to issue the impugned sale order dated 30.05.2025. The said order itself does not indicate that Respondent No.4 was found

to be the highest bidder or that he had even participated in the tender process.

4. This is further supported by a document at Exhibit "T" dated 19.06.2025 obtained by the Petitioner under the Right to Information Act, 2005, which shows that after January 2025, the said Respondents did not undertake any process of inviting bids by issuing tender for sale of the aforesaid "Pond Ash".

5. The Petitioner has made out a prima facie case in its favour to contend that the impugned sale order has been arbitrarily issued circumventing the entire tender process, solely with a view to benefit Respondent No. 4."

3. Respondent Nos.2 and 3- MAHAGENCO as well as Respondent Nos. 4 i.e. the entity in whose favour the impugned sale order was issued, filed their reply affidavits. The petitioner filed its rejoinder affidavit and the petition is taken up for consideration.

4. A measure of urgency is shown in the present petition, for the reason that it concerns lifting of pond ash that accumulates as a consequence of the activities of the Thermal Power Station and it being a pollutant, its expeditious disposal is necessary. Initially, the pond ash and fly ash generated from Thermal Power Station was permitted to be lifted without any charges but, it was found that the said pond ash/fly ash could be used in production of the cement and concrete and in that light, the respondent MAHAGENCO came out with a comprehensive

Ash Utilization and Management Policy in the year 2024, copy of which is placed on record along-with reply affidavit on behalf of Respondent Nos. 2 and 3.

5. Learned counsel for the petitioner, apart from reiterating the above quoted contentions raised on behalf of the petitioner, which is a registered society of Labourers and Project Affected Persons, submitted that the impugned sale order was issued in favour of Respondent No.4 without tender process and that the respondent MAHAGENCO, by the impugned action, was seeking to illegally benefit Respondent No.4 in the teeth of its own aforesaid policy of utilization and management of ash.

6. It is submitted that as per the policy, 20% of the pond ash is to be dealt with only by Project Affected Persons and their Associations like the petitioner, while the remaining 80% is open for all entities. It is submitted that although the petitioner had participated in the tender process initiated in January 2023 for disposal of pond ash to the extent of 80% and it was the highest bidder, it could not make good its highest bid. The petitioner had asked certain concession but the same could not be given and therefore, it failed to make good its bid. It is submitted that there were two other bidders, who also could not take their bids to

the logical end and therefore, a situation arose, where there were no takers for the said pond ash.

7. It is submitted that in such circumstances, instead of undertaking fresh tender process, the respondent MAHAGENCO, in an arbitrary, illegal and clandestine manner, issued the impugned sale order in favour of Respondent No.4 on 30.05.2025, on an application privately submitted by Respondent No.4 before the respondent MAHAGENCO. It is submitted that nothing could be more arbitrary than the conduct of the said respondent and therefore, the impugned sale order deserves to be quashed and set aside.

8. It is submitted that even if the comprehensive Ash Utilization and Management Policy-2024 of the respondent- MAHAGENCO is to be taken into consideration, till such time the tender process initiated by the said respondent results in issuance of order in favour of an entity through a fair and transparent process, in the interregnum, short orders can be issued to ensure that the pond ash does not accumulate and it does not pollute the environment. Such short orders can be issued on first come first service basis, for a maximum period of six months. Yet, by the impugned sale order, Respondent No.4 was granted permission to lift pond ash for a period of one year. It is submitted that, therefore, the impugned sale order deserves to be quashed and set aside.

9. As regards lifting of remaining 20% pond ash, it is submitted that the contract can be awarded only to the Project Affected Persons and their Associations like the petitioner herein. It is emphasized that the tender notice was issued as far back as on 28.05.2024, in response to which the petitioner had submitted its bid. There were other bidders also, who had submitted their bids. But, till date, the respondent MAHAGENCO has not taken any steps in furtherance of the said tender notice, as a consequence of which, no entity associated with Project Affected Persons has been awarded the contract of picking up pond ash. This is resulting in unnecessary frustration amongst the Project Affected Persons in the vicinity of the Thermal Power Station, indicating the arbitrary approach adopted by the respondent MAHAGENCO.

10. In that light, it is submitted that this court ought not to show any indulgence in favour of Respondent No.4, which is the beneficiary of illegal acts of the respondent MAHAGENCO and that the said respondent ought to be directed to take the tender notice dated 28.05.2024 to its logical conclusion. It is submitted that Respondent No. 4 has already lifted pond ash on the basis of short order issued in March, 2025 for a period of three months and as per the aforesaid policy of the respondent MAHAGENCO, Respondent No.4 cannot be permitted to lift the pond ash beyond a further period of three months,

if at all. In that light, it is submitted that the writ petition deserves to be allowed.

11. On the other hand, the learned counsel appearing for the respondent MAHAGENCO submitted that the petitioner cannot make a grievance in the facts and circumstances of the present case, as it admittedly failed to make good its highest bid in the tender process initiated on 24.01.2023. It is submitted that the base price was fixed at Rs.75 per Metric Ton (MT) of pond ash. In the bidding process, the petitioner offered bid of Rs. 193 per MT of pond ash. The respondent MAHAGENCO waited for a long period of time for the petitioner to make good its bid. The petitioner failed to make good its bid and in that backdrop, it cannot turn around and challenge the impugned sale order issued in favour of Respondent no.4. Much emphasis was placed on the fact that the pond ash is a serious pollutant and if it is allowed to remain, it would not only pollute the air in the form of fly ash, but as pond ash, it has a tendency of polluting the area in the vicinity. Attention of this court is invited to the Central Government notification dated 31.12.2021, which specifies that compensation will have to be paid @ Rs.1000 per ton for unutilized ash at the end of the financial year. It is submitted that the respondent MAHAGENCO is likely to face such consequences in the event such pond ash is not lifted within a reasonable period of time.

12. It is submitted that in such circumstances, the respondent MAHAGENCO was constrained to issue short order in favour of various entities for lifting pond ash during the period, when the tender process initiated as far back as in January 2023 could not reach its logical conclusion. Attention of this court is invited to some such short orders issued in favour of various entities. It is emphasized that on 06.03.2025, such a short order was issued in favour of Respondent No.4 in terms of the aforementioned policy formulated in the year 2024 and therefore, it cannot be said that the respondent MAHAGENCO had, in any manner, favoured respondent No.4.

13. It is further submitted that, it is in these circumstances that the impugned sale order was issued and the petitioner, which had failed to make good its own bid, cannot be heard to raise a grievance in the facts and circumstances of the present case.

14. It is further submitted that the internal communications exchanged between the respondents would show that Respondent No.4 was told to increase its bid to the highest bid offered by the petitioner at Rs.193 per MT of pond ash. This indicates that the respondent MAHAGENCO ensured that there was no financial loss suffered during the process of issuing short order in favour of Respondent No.4. In such circumstances, it is submitted that this Court may issue appropriate

directions so that pond ash is picked up and disposed off in an expeditious manner, so that it does not result in any pollution in the vicinity of the Thermal Power Station.

15. Mr. P. R. Katneshwarkar, learned senior counsel appearing on behalf of Respondent No.4, submitted that the impugned sale order could certainly be defended to the extent of the six months period as specified in the aforementioned policy of the year 2024 formulated by the respondent MAHAGENCO. It is submitted that in the present case, due to the interim order passed by this Court on 16.07.2025, Respondent No.4 was not able to lift pond ash. It was sought to be indicated that between the period from issuance of the impugned sale order on 30.05.025 till the interim order was passed on 16.07.2025, due to the law and order problem created by the villagers in the vicinity, pond ash could not be lifted. In that light, it is submitted that this Court may consider factoring in the effect of the interim order, if respondent No.4 is permitted to lift the pond ash at the rate of Rs.193 per MT. It is submitted that this would be in line with the aforementioned policy of the year 2024 and, therefore, appropriate orders may be passed in the facts and circumstances of the present case.

16. We have considered the rival submissions. We find that there is indeed a measure of urgency in the present case for the reason that

pond ash cannot be allowed to remain in the vicinity of Thermal Power Station, as it would pollute the local environment. The notification issued by the Central Government indeed shows the seriousness with which the policy has been formulated to ensure that the pond ash and fly ash are dealt with expeditiously to reduce adverse effect on the environment.

17. It is an admitted position that initially pond ash was allowed to be lifted without any charges but, subsequently, the policy is formulated for charging lifting of the said pond ash. We find that in such circumstances, the respondent MAHAGENCO was and is expected to undertake transparent tender process to ensure that the highest bidder is allowed to pick up the pond ash as it would not only generate sufficient finances, but it would also ensure the expeditious disposal of the pond ash, which otherwise pollutes the environment.

18. The document on record shows that on 24.01.2023, the respondent MAHAGENCO had undertaken the process of inviting bids by issuing a tender notice for picking up pond ash to the extent of 80%. The petitioner alongwith a number of bidders participated in the tender process. Respondent No.4 was not a participant. The petitioner was found to be a highest bidder at Rs.193 per MT of pond ash, while the base price was fixed at Rs.75 per MT of pond ash. If the petitioner had

made good its bid, perhaps, the matter would not have reached this Court. It is because the petitioner failed to make good its bid, despite sufficient time granted by the respondent MAHAGENCO that the situation arose where the said respondent was constrained to issue short orders for picking up and disposal of pond ash. The documents on record show that the respondent MAHAGENCO indeed issued such short orders in favour of various entities and the said process did not involve inviting bids in pursuance of tender notice.

19. The record shows that on 06.03.2025, one such short order was issued in favour of Respondent No.4. The documents on record show that initially an attempt was made to allow Respondent No.4 to pick up pond ash at much lower rate but eventually, in pursuance of communications exchanged between the respondents, the Respondent No.4 was called upon to raise its price equivalent to the highest bid at Rs.193 per MT offered by the petitioner. Respondent No.4 agreed for the same and it is an admitted position that it lifted pond ash between March and June 2025 for three months at the aforesaid rate of Rs.193 per MT.

20. These facts indeed indicate that the respondent MAHAGENCO at least ensured that the respondent No.4 paid at the rate equal to the highest bid offered by the petitioner. But, we find that in the process of

issuing the impugned sale order dated 30.05.2025, the respondent MAHAGENCO acted in the teeth of its own policy of the year 2024. Ideally, the tender process having failed, the respondent MAHAGENCO ought to have issued a fresh tender notice for expeditious disposal of the pond ash so that it did not pollute the environment. Instead of initiating such a tender process in a fair and transparent manner, the respondent MAHAGENCO continued to stick to its policy of issuing short orders. The insistence of issuing such short orders gives enough scope to raise allegations against the respondent MAHAGENCO about its intention to favour certain private parties, to the exclusion of other entities like the petitioner that are concerned with Project Affected Persons. This appears to be in the teeth of its own policy. Be that as it may, while issuing the impugned sale order, the Respondent MAHAGENCO awarded a contract period of one year in favour of Respondent No. 4 till 31.05.2026. A perusal of the relevant portion of the policy of the year 2024 shows that the policy contemplates the following action to be undertaken by the respondent MAHAGENCO.

"If the contracted agencies are not lifting/unable to lift the ash or in case of excess ash generation, then the remaining/balance ash quantity will be given to ash demanding agencies on short term basis (first come first service) for the maximum period of six months or till further instructions, whichever is

earlier at the highest existing prevailing rate at the respective power station."

21. The above quoted portion shows that in an emergent situation, where the contracting agencies do not lift or they are unable to lift the ash and there is excess generation of the same, orders on short term basis can be issued for a maximum period of six months. We find that in the present case, even if the respondent MAHAGENCO is to take shelter under the said policy of the year 2024, sale order could not have been issued in favour of Respondent No.4 beyond the period of six months. On this ground itself, the impugned order deserves to be quashed and set aside.

22. Insofar as Respondent No.4 is concerned, we do find substance in the contention raised on behalf of the said respondent that the rate, at which the pond ash was allowed to be sold to the said respondent, was equivalent to the highest bid offered by the petitioner i.e. Rs.193 per MT. It is a different matter that such an offer was made in the year 2023 but still, it cannot be said that Respondent No. 4 was allowed to pick up pond ash at either the base price or slightly more than the base price. Since the highest bid price offered by the petitioner was indeed paid by the said respondent and it undertakes to pay such amount even in future, we are of the opinion that respondent No.4, in a manner of speaking, justified its stand before this Court.

23. As regards the balance 20% disposal of pond ash, we find substance in the contention raised on behalf of the petitioner that the respondent MAHAGENCO arbitrarily failed to take the tender notice dated 28.05.2024 to its logical end. The said respondent has not been able to explain as to why the process kept on languishing, other than claiming that villagers in the vicinity of the Thermal Power Plant were creating law and order problem. If the process could not be taken forward for justifiable reasons, it should have been cancelled and a fresh tender notice could have been issued. But, the respondent MAHAGENCO failed to take any such steps. It is to be noted that the balance 20% pond ash disposal is restricted to Project Affected Persons/Land affected agencies and persons, thereby indicating that private entities like Respondent No.4 cannot have any role in the same.

24. During the course of hearing of this petition, we had put a specific query to the learned counsel appearing for Respondent MAHAGENCO as to how much time it will take for fresh tender process to be undertaken and completed for disposal of pond ash. The learned counsel for the respondent MAHAGENCO relied upon the guidelines issued by the Central Vigilance Committee (CVC), pertaining to placement of order against tender, indicating that for various stages of the tender process specific days are to be earmarked, totaling to a period of 117 days. It is specifically submitted on behalf of the said

respondent that if this court is inclined to issue directions for undertaking fresh tender process, the same would be completed within the aforesaid time period specified by the guidelines issued by CVC. In this regard, it is vehemently submitted on behalf of the petitioner that such a long period of time will not be necessary and that a shorter time period can be specified by this Court.

25. In the light of the observations we have made herein above, it would be appropriate that the respondent MAHAGENCO is directed to undertake fresh tender process for both, 80% as well as 20% pond ash disposal in terms of the aforementioned policy adopted by Respondent MAHAGENCO. The time period for initiating and completing the said tender process can be in terms of the guidelines issued by the CVC. We are inclined to issue directions in respect of even 20% pond ash disposal, for the reason that we find that the tender process initiated pursuant to notice dated 28.05.2024 has been frustrated, due to inaction on the part of the respondent MAHAGENCO. We are also concerned with the necessity of ensuring proper and expeditious disposal of the pond ash, so that there is no adverse effect on the local condition of environment in the vicinity of the Thermal Power Station of the respondent MAHAGENCO.

26. As regards the manner in which the pond ash is to be disposed off during the process of completion of fresh tender process, we find that insofar as 80% disposal of pond ash is concerned, in terms of the policy of the respondent MAHAGENCO, directions can be issued in favour of Respondent no.4, particularly for the reason that it has indeed matched the highest bid offered by the petitioner during the initial tender process, although the respondent MAHAGENCO will have to limit the order to be issued in favour of Respondent No.4 at the same rate till completion of the fresh tender process.

27. In view of the above, the writ petition is disposed of as follows:

- (a) The impugned sale order dated 30.05.2025 is quashed and set aside.
- (b) The respondent MAHAGENCO is directed to issue fresh tender notices on or before 01.10.2025 for both, 80% as well as 20% pond ash disposal.
- (c) The tender process shall be undertaken in a fair and transparent manner, adhering to time lines specified in the aforesaid guidelines of the CVC, with the outer limit of 117 days.

- (d) We would appreciate, if the respondent MAHAGENCO undertakes and completes the tender process in an expeditious manner and in a shorter period of time. It is made clear that the period of 117 days for the said tender process would be treated as the outer limit, with no possibility of extension of time.
- (e) As regard disposal of 80% pond ash during the pendency of the fresh tender process, Respondent No.4 be permitted to lift the pond ash at the aforesaid rate of Rs.193 per MT for a short period of time, not exceeding the period consumed for completing the aforesaid tender process. Respondent No.4 shall claim no equities in the light of the aforesaid direction issued by this Court.
- (f) Insofar as tender process of 20% pond ash disposal, it is also to be initiated on or before 01.10.2025. The respondent MAHAGENCO shall ensure that till the said tender process is completed, the entities concerning Project Affected Persons are issued short orders for disposal of pond ash as to the extent of 20%. This could include the petitioner also on an application being made to the respondent MAHAGENCO. It is specifically directed that the respondent MAHAGENCO shall not single

our the petitioner and shall not give discriminatory treatment merely because the petitioner approached this Court invoking writ jurisdiction.

- (g) We make it clear that Respondent Nos. 2 and 3- MAHAGENCO shall not be permitted to seek extension of time to complete the tender process for both 80% and 20% pond as disposal. If the tender process is delayed beyond the time specified by this Court, the officers of Respondent Nos. 2 and 3 shall be held personally responsible for the same.
- (h) Pending applications, if any, also stand disposed of.

(Y. G. KHOBRADE, J.)

(MANISH PITALE, J.)

JPChavan