

Singrauli Super Thermal Power Station vs Ashwani Kumar Dubey on 5 July, 2023

Author: B.V. Nagarathna

Bench: Prashant Kumar Mishra, B.V. Nagarathna

REPORTABLE

2023 INSC 618

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3856/2022

SINGRAULI SUPER THERMAL POWER STATION

APPELLANT(S)

ASHWANI KUMAR DUBEY & ORS.

VERSUS

RESPONDENT(S)

WITH

CIVIL APPEAL No.4529/2022

CIVIL APPEAL No.4525/2022

CIVIL APPEAL No.4581/2022

J U D G M E N T

NAGARATHNA J.

Since the grievances ventilated by the appellant(s) in these appeals are common, they have been clubbed and heard together and are disposed of by this common judgment.

2. The appellants(s) herein are aggrieved by the order passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as “NGT” for the sake of convenience) dated 18.01.2022. By the said order the following directions have been issued against the appellant(s) herein:-

“Directions:

21. In the light of above discussion, it is patent that remedial measures are required in terms of recommendations set out in para 15 above in respect of individual TPPs or other projects as well as general issues applicable to all the TPPs such as timely installation of air pollution control and monitoring devises, timely utilization and disposal of fly ash, addressing public health issues, steps for restoration of

deteriorated environment by bringing down CEPI scores in the entire area, restoration of Rihand Reservoir and other damaged/degraded areas, providing arrangement for public health facilities, including water supply and by coordinated and concerted efforts and high level monitoring. The PP are to be accountable for past violations and are under obligation to remedy the violations and follow the norms for future. The regulators are to enforce the same and higher authorities are to oversee. Accordingly, following direction are issued:

i. We direct constitution of a fly ash management and utilization Mission to be jointly headed by the Secretaries, MoEF&CC, Coal and Power, GoI and Chief Secretaries of UP and MP. The Secretary, MoEF&CC will be the nodal agency for coordination and compliance. The Mission will coordinate and monitor issues relating to handling and disposal of flyash as well as all associated issues in the light of above discussion. It may hold its first meeting within one month to take stock of the situation and to prepare action plan in the light of recommendations of Joint Committees quoted earlier in para 15 above in respect of individual plants as well as road map generally. Thereafter, it may meet atleast once in a month for one year to review the progress. The resolutions of the Mission and quarterly progress may be placed on the website of MoEF&CC for information of the stake holders and inhabitants in the area. The Mission will be free to interact with the concerned Government Departments/ Expert institutions/individuals/other stakeholders. The Mission may in its first meeting require voluntary financial contribution by all the projects in proportion of the financial capacity of the projects out of CSR funds or otherwise. The contribution, alongwith compensation which may be collected may be credited to a separate environment restoration account for restoration of environment and relief to the victims of damage to the environment in such manner as may be found necessary by the Mission. Any victim or aggrieved party will be free to approach the Mission for providing such relief. The Mission may also consider the safeguards laid down in the Notification dated 31.12.2021, particularly for safety audits of sh dykes which should be conducted particularly for structural stability, as far as possible within six months. Advisory issued by the Ministry of Power dated 22.9.2021 will not be enforced being against the spirit of notification dated 31. 12.2021 and obstructing much needed speedy utilisation/disposal of legacy flyash. The Mission may evolve mechanism for interaction with stake holders, including associations of brick kiln owners. Guidelines be also issued for siting, design and engineering standards for the location, disposal, maintenance and regulation of Ash Ponds as breach of a fly ash pond result in great disaster. Public health and risk impact assessment in the areas of operation of TPPs and generators of fly ash may be got conducted. The Mission may also monitor scientific management and utilization of fly ash by power projects outside Singrauli and Sonebhadra, in coordination with Chief Secretaries of concerned States and adopting safety measures for ash dykes, installing devices to control air pollution, (including FGDs, OCEMS) in a time bound manner and restoration of environment and public health. The Mission may also consider use of beneficiated coal. It may in particular consider on-site and off-site crisis management plans with regard to fly ash

ponds and dykes.

As noted earlier, legacy fly ash is 1670.602 Million Tonnes as on.31.12.2021 and data of ash generation and utilization of legacy fly ash is as follows:

"Summary of of Ash Generation and Utilization during year 2020-21 Capacity (MW) 2,13,030 MW Coal Consumed 672.130 Million Tonnes Fly Ash Generation 222.789 Million Tonnes Fly Ash Utilization 205.098 Million Tonnes Percentage Utilization 92.06% Legacy Flyash 1670.602 Million Tonnes The Committee of Secretaries, in coordination with PPs and statutory regulators, may draw a road map for utilization and disposal of entire legacy fly ash for Sonebhadra and Singrauli areas as well as for all the Power Plants located in clusters or standalone with tagging the sources to utilize fly ash on voluntary and compulsion mode for which required mechanism be laid down.

ii. With regard to past violations, the PPs remain liable and the Joint Committee of CPCB, State PCB and jurisdictional District Magistrates may determine compensation following due process, on the principles laid down inter alia in M.C. Mehta, (1987) 1 sec 395, Sterlite (2013) 4 sec 575 and Goel Ganga (2018) 18 SCC 257, having regard to the period of violation and financial capacity of the unit. The PPs may take remedial measures as per recommendations of the Committee and as per law, failing with coercive measures for continuing or future violations be taken by concerned authorities.

iii. Statutory regulators may take action in terms of need for compliances in the light of recommendations with regard to individual Plants as well as generally so as to require the concerned PPs to comply, failing which coercive measures be taken by the statutory regulators In accordance with law.

iv. In respect of incident dated 10.04.2020, compensation paid to heirs of the deceased at the rate of Rs. 10 lakhs per death is increased to Rs. 15 lakhs on principles laid down inter alia in Sarla Verma (2009) 6 SCC 121 and Uphar Cinema (2011) 14 SCC 481. We direct the remaining amount to be paid within one month. This order will not debar the heirs of the victims to claim higher compensation by approaching appropriate forum. If the salaries to persons appointed as compensation to the victims are below minimum wages, the PP may ensure compliance of law on the subject which may be also looked into by the concerned Labour Departments of the State of UP and MP. The statutory regulators may take further remedial action in terms of recommendations of the Committee in OA 148/2020, quoted earlier for restoration of environment and preventing such incidents.

v. With regard to breach of Rihand Reservoir also, further remedial measures be taken in terms of recommendations on the subject, quoted in para 15 above.

All the matters (including IAs) will stand disposed of accordingly. If any grievance survives, aggrieved parties are free to take remedies as per law.

A copy of this order be forwarded to the Secretaries, MoEF&CC, Coal and Power, GoI and Chief Secretaries of UP and MP, CPCB, State PCBs, SEIAAs, PCCFs (HoFF) UP and MP, District Magistrates, Singrauli and Sonebhadra, Labour Commissioners, UP and MP, State Disaster Management Authorities of UP and MP and SSPs by e-mail for compliance. CPCB may also circulate the same by email to all TPPs or other concerned to facilitate compliance.

Adarsh Kumar Goel, CP Sudhhr Agarwal, JM Brijesh Sethi, JM Prof. A. Senthil Vel,
EM Dr. Afroz Ahmad, EM January 18, 2022

3. Being aggrieved by the directions issued by the NGT and the manner in which the original petition has been disposed of, the appellants have filed these appeals.

4. At this stage itself it may be noted that the first respondent, the original applicant before the NGT has been served in all the cases and has not appeared in these cases. In the circumstances, the appeals have been heard and decided, by taking into consideration, the submissions of the learned counsel appearing for the appellants herein.

5. Learned Solicitor General appearing for the appellants in C.A. No.3856/2022 at the outset submitted that the proceedings of the NGT are judicial proceedings and compliance of principles of natural justice is a hallmark of all judicial proceedings. That in the instant case, while the NGT was well within its powers to constitute an expert Committee and to seek a report with regard to the alleged violations complained of by the first respondent herein, on receipt of the said report, it was necessary that the alleged violators were given an opportunity to object to the said report and after consideration of the objections, the NGT ought to have passed a considered order and issued only those directions which were appropriate having regard to the facts of each industry that was made a respondent before the NGT.

He further submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as the "Act" for the sake of convenience) categorically states that the Tribunal, though not bound by the procedure laid down by the Code of Civil Procedure, 1908, shall nevertheless be guided by the principles of natural justice.

According to learned Solicitor General in the instant case, there has been gross violation of the principles of national justice on two counts: firstly, the report of the Committee constituted by the NGT and the recommendations made by the said Committee could not be objected to by the appellant(s) herein as there was hardly any time given to the appellants to even peruse the same. In this regard, he drew our attention to the fact that the report and the recommendations of the Committee constituted by the NGT were put up on the website of the NGT on 15.01.2022 and three days thereafter i.e., on 18.01.2022 the impugned directions have been issued. Secondly, he submitted that the fact that in such a short span of time the matters were considered and disposed

of by the NGT, in the absence of there being objections filed by the appellants herein nor having heard the appellants herein, would also imply that there has been no consideration by the NGT of the pros and cons vis-a-vis the recommendations made by the expert Committee and as to whether the directions issued were appropriate to the case of each of the appellant(s) herein or not.

It was submitted that had the appellants herein had an opportunity of filing their objections to the recommendations made by the Committee constituted by the NGT and had the appellants been heard in the matter, possibly appropriate directions could have been issued as against the appellant(s) herein.

In conclusion, learned Solicitor General submitted that the impugned order may be set aside and the matter may be remanded to the NGT for re-consideration of the entire case of the first respondent herein in compliance with the principles of natural justice, that is, firstly by giving an opportunity to the appellants herein to file their objections, if any, to the recommendations of the Committee constituted by the NGT and secondly, by giving a further opportunity of hearing to the appellants herein.

In this regard, learned Solicitor General relied upon a decision of this Court in Sanghar Zuber Ismail vs. Ministry of Environment, Forest and Climate Change and Another reported in (2021) SCC Online SC 669.

6. Learned senior counsel Mr. Sanjay Jain and Mr. Nazki adopted the submissions of learned Solicitor General and also contended that the manner in which the original petition has been disposed of by the NGT in these cases was in gross violation of the principles of natural justice. In this regard, reliance is also placed on another decision of this Court in case of Kantha Vibhag Yuva Koli Samaj Parivartan vs. State of Gujarat reported in 2022 SCC online SC 120.

7. The other learned counsel who have appeared, brought to our notice that in the instant case, there were two reports filed and therefore, it was all the more necessary that the said reports had to be considered in order to examine as to whether there were contradictions in them and were in accordance with law.

8. Learned ASG appearing for the respondent No.2 as well as other learned counsel for private respondents also supported the arguments of learned Solicitor General.

9. We find substance in the submissions made by learned Solicitor General, learned senior counsel and learned counsel for the respective parties.

As already noted, the first respondent is the contesting respondent herein who has been served and has failed to appear in these cases.

10. The directions issued by the NGT have been extracted above. The aforesaid directions are in light of the recommendations made by the expert Committee vide two reports submitted to the NGT. It is noted that the NGT has extracted the report/s as well as the recommendations at paragraphs 14-16

of the impugned order and has observed as under:

“14. Points for determination are remedial action against pollution due to failure to scientifically manage and utilise the flyash, accountability for damage due to breach of Rihand reservoir and due to breach of ash pond, resulting in deaths and injuries and damage to the crops and environment. As already mentioned, legacy fly ash is 1670.602 Million Tonnes as on 31.12.2021 which has potential for serious damage to the environment as shown by incidents of dyke breaches contaminating sources of water and air pollution making industrial areas critically polluted. Air control devices are not installed in many TPPs. There are incidents of deaths, injuries and loss of flora and fauna.

15. We have considered the data furnished in the reports furnished in pursuance of earlier orders of this Tribunal dated 04.11.2020 in OA No. 117/2014, 14.07.2020 in OA No. 164/2018 and 29.6.2020 in OA No. 148/2020, including the recommendations for remedial action. The compliance status as projected in the reports of the Joint Committees/Oversight Committees shows huge gap in storing, handling, management and utilization of fly ash and consequential continuing damage to the environment and public health. Such huge gaps are patent from the recommendations part in the reports.

Deficiencies noted in respect of some individual TPPs appear to be of representative nature and may exist in almost all TPPs, unless shown otherwise on the ground and not in the form of self-serving denial. In the light of the said recommendations, further remedial action needs to be taken to enforce the principle of sustainable development under section 20 of the NGT Act. The recommendations are reproduced below:

“M/s NTPC Limited Shakti Nagar Sonbhadra:

Recommendations of the Committee xxx M/s NTPC Limited Rihand Super Thermal Power (Power Plant) Recommendations of the Committee xxx M/s Anpara Thermal Power Plant (Power Plant) Recommendations of the Committee xxx M/s Anpara ‘C’ Lanco Thermal Power Station Recommendations of the Committee xxx M/s Renusagar Thermal Power Plant Recommendations of the Committee xxx M/s Obra Thermal Power Station (Power Plant) Recommendations of the Committee xxx Coal Mines of M/s Northern Coalfields Limited (NCL)

1. NCL Dudhichuwa Project, Sonbhadra Recommendations of the Committee xxx
2. NCL Bina Project, Bina, Sonbhadra Recommendations of the Committee xxx
3. NCL Krishna Shila Project Recommendations of the Committee xxx
4. M/s NCL Kakri Project, Sonbhadra Recommendations of the Committee xxx

5. NCL Khadia Project Sonbhadra Recommendations of the Committee xxx Aluminum Smelter: M/s HINDALCO Industries Ltd., Renukoot, Sonbhadra Recommendations of the Committee xxx M/s Grasim Industries Limited Chemical Division, Renukoot, Sonbhadra Recommendations of the Committee xxx M/s Birla Carbon India Pvt. Ltd., Renukoot, Sonbhadra Recommendations of the Committee xxx Stone Crusher Recommendations of the Committee xxx A. Thermal Power Plants (TPPs) and Industries B. Coal Mines of M/s Northern Coalfields Limited (NCL) C. Stone Crushers Recommendations”

16. From the above, it is seen that there is a long way to go for protecting environment and public health. The failures of the TPPs are alarming. We find no reason not to accept all the recommendations and to direct remedial action. Thus, all recommendations are accepted and further remedial action is directed to be taken by the statutory regulators which also be overseen by the joint Committees of CPCB, State PCB and the jurisdictional District Magistrates, with CPCB and State PCBs being nodal agencies. Quarterly reports may now be filed with the MoEF&CC to be considered by the Coordinating Committee being hereby constituted.”

11. In other words, the NGT has simply accepted the recommendations as remedial action suggested by the Committee but the same is in the absence of there being objections filed by the appellants herein who were the respondents before the NGT and without giving any hearing to them and against whom directions impugned in these cases have been passed by the NGT. We find that the procedure adopted by the NGT is an instance of violation of the principles of natural justice. Section 19(1) of the NGT Act, 2010 reads as under:

“19.(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.” At this stage, we may also observe that the recommendations made by an expert Committee are not binding on the NGT, they are only by way of assistance to enable the NGT to arrive at a correct decision in the matter.

12. In this regard reliance may be placed on paragraph 7 and 8 of the judgment of this Court in Sanghar Zuber Ismail (supra) wherein it has been stated as under:

“7. Having regard to the nature of its appellate power, the NGT has to apply its mind to the substantive grounds of challenge. The NGT has merely based its conclusion on the statement which has been made by the project proponent and has not conducted an independent appraisal of the grounds of challenge.

8... the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction.

Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The

decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.”

13. Furthermore, in *Kantha Vibhag* (supra), this Court had criticized the practice of delegation of core adjudication to the joint committee:

15. It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-

finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

16. Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In *Hanuman Laxman Aroskar v. Union of India*⁹, a two- Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the environment. The Court held:

“133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...

134. NGT is an expert adjudicatory body on the environment.”

17. The NGT does not have a dearth of ‘expertise’ when it comes to the issues of environment.

18. Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees.

19. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.”

14. In a recent landmark decision, *Madhyamam Broadcasting Limited v. Union of India* (2023) SCC Online 366, the principles of natural justice have been crystalized in the words of Hon’ble CJI-Dr Dhananjaya Y Chandrachud as under:

“53. ...The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness....”

15. A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

16. In this context, it would be useful to refer to what is known as the ‘official notice’ doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies

with greater force to a judicial / adjudicatory body.

Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

17. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.

18. We have perused the impugned order of the NGT and particularly paragraph '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 15.01.2022 and the final order of the NGT was passed three days later on, i.e. 18.01.2022. 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 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.

19. The appeals are allowed and disposed of in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

... .. J . (B . V . N A G A R A T H N A)
.....J. (PRASHANT KUMAR MISHRA) NEW DELHI;

JULY 05, 2023