

W.P.No.30237 of 2018
and
W.MP.No. 35289 of 2018

M.SATHYANARAYANAN, J.,
and
N.SESHASAYEE, J.,

[Order of the Court was made by M.SATHYANARAYANAN, J..]

Notice to the respondents through Court as well as privately returnable on 18.11.2018.

2. Mr.Jayaprakash Narayanan, Learned Government Pleader (in-charge), accepts notice on behalf of 3rd respondent. Mr.Abdul Saleem, learned Standing Counsel accepts notice on behalf of 4th respondent.

3. The learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that the first respondent, vide notification dated 03/11/2009 in S.O.2804(E) had mandated that all new coal and lignite power Stations or expansion units commissioned after the said notification, achieved 100% fly ash from the date of commissioning, and the 5th respondent not only violated the said notification, but also, violated the schedule of utilization mentioned in Table-III of the said notification, which is a very serious offence and in violation of all pollution control norms and without adhering to the Corporate Social Responsibility, had indulged in

dumping the soil, especially fly ash in the Ennore Creek area, which will definitely lead to environmental health hazards and natural disaster and unless such a practise is prevented by way of an interim order, the damage caused on that account may be irrecoverable and prays for appropriate orders.

4. This Court has considered the submission made by the learned counsel for the petitioner and also perused the materials placed before it.

5. The first respondent had sent a communication dated 09.05.2018 in J-13015 /08/2018-IA.I(T), wherein it has taken into consideration the environmental clearance granted to the construction of 3X500 MW Vallur Thermal Power Plant and also the representations from the Coastal Resource Centre alleging that 14 hectares of mangroves area had been destroyed by the project proponent for construction of ashdyke leading to violation of CRZ notification, 2011 and also the project proponent has not achieved 100% fly ash utilization and therefore, the Additional Principal Chief Conservator of Forests (C) is directed to cause inspection and submit a report.

6. The Government of India, Ministry of Environment, Forests and Climate Change, Nungambakkam, Chennai - 34 had also caused inspection and filed a detailed monitoring report and its relevant extract the following observations:-

"12. Status of Construction:

a. Date of Commencement:

Unit I = June 2008; Unit II = Nov 2008; Unit III = May 2010

With respect to CRZ facilities, no details were made available regarding date of commencement and completion.

b. Date of Completion (actual and / or planned):

Unit I = 29/11/2012; Unit II = 25/08/2013; Unit III= 26/02/2015.

13. Reasons for the delay if the project is yet to start:

Lagoon 1 ash dyke construction was delayed due to mangroves issue.

14. Date of Site Visit:

a. The dates on which the project was monitored by the Regional Office on previous occasions, if any: 28/12/2012

b. Date of site visit for this monitoring report : 23/05/2018

Clearance letter no. with Date	Facilities envisaged	Present Status	Consent To Operate renewal
J-13011/33/2006-IA.II(T) dated 18/04/2007	2X500 MW thermal power plant	Project has been implemented and the unit was under operation during the visit.	CTO renewal has been obtained from TNPCB vide order no.180824461264 dated 21/02/2018 which was expired on 31/03/2018. PP informed that application for CTO renewal has been submitted to TNPCB and the same is yet to be obtained.
J-13011/62/2008-IA.II(T) dated 03/06/2009	1X500 MW thermal power plant		
11-22/2009-IA.III dated 14/07/2009	CRZ facilities (Seawater intake/outfall pipelines, bridge, conveyor and green belt development)		

Sl.No	Conditions	Compliance Status								
i.	The total land requirement shall not exceed 1184 acres for all the activities/facilities of the power project put together.	<p>Refer below.</p> <p>PP informed during the visit that only 1139.97 acres of land is in their possession. Breakup of the land demarcation as provided during the visit is given below.</p> <p>Main plant = 470 acres Ash dyke = 524.81 acres Creek Islands = 80.71 acres Salt Office = 1.65 acres Township = 45.00 acres Conveyor & pipe corridor = 17.80 acres</p> <p>As per the environmental clearance accorded 114 acres of land falls within CRZ and this has to be left undisturbed. However, physical demarcation of 114 acres of land falls within CRZ has not been done by M/s.NTECL at the site. Hence, compliance status regarding disturbance to the CRZ area if any could not be ascertained. In view of this, M/s.NTECL may carry out the physical demarcation of 114 acres of land falls within CRZ in consultation with the Competent Authority/Agencies</p>								
xiii.	Fly ash shall be collected in dry form and shall be used in a phased manner as per provisions of the notification on Fly Ash Utilization issued by the Ministry in September, 1999 and its amendment. By the end of 9th year full fly ash utilization should be ensured. Unutilized ash shall be disposed off in the ash pond in the form of High concentration slurry.	<p>Not complied.</p> <p>PP has commissioned ash silo 1,2 and 3 during May,2016, October, 2016 and May,2017 as informed during the visit. Dry fly ash collection and its utilization are progressively increasing since 201-16.</p> <p>As per the fly ash notification dated 14/09/1999 and its subsequent amendments, thermal power station is supposed to achieve 100% fly ash utilization, four years from the date of commissioning of the power plant.</p> <p>As per the records made available during the visit, the commissioning date of the three units are given as below:</p> <table border="1" data-bbox="833 1675 1331 1898"> <thead> <tr> <th>Details</th> <th>Date of Commissioning</th> </tr> </thead> <tbody> <tr> <td>Unit I:500 MW (Phase I)</td> <td>29.11.2012</td> </tr> <tr> <td>Unit II:500 MW (Phase I)</td> <td>25.08.2013</td> </tr> <tr> <td>Unit III:500 MW (Phase I)</td> <td>26.02.2015</td> </tr> </tbody> </table>	Details	Date of Commissioning	Unit I:500 MW (Phase I)	29.11.2012	Unit II:500 MW (Phase I)	25.08.2013	Unit III:500 MW (Phase I)	26.02.2015
Details	Date of Commissioning									
Unit I:500 MW (Phase I)	29.11.2012									
Unit II:500 MW (Phase I)	25.08.2013									
Unit III:500 MW (Phase I)	26.02.2015									

Sl.No	Conditions	Compliance Status														
		<p>Further, the percentage of fly ash utilization by M/s.NTECL is given below:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Percentage of fly ash utilization</th> </tr> </thead> <tbody> <tr> <td>2012-13</td> <td>0</td> </tr> <tr> <td>2013-14</td> <td>7.95%</td> </tr> <tr> <td>2014-15</td> <td>8.80%</td> </tr> <tr> <td>2015-16</td> <td>16.17%</td> </tr> <tr> <td>2016-17</td> <td>42.76%</td> </tr> <tr> <td>2017-18</td> <td>64.97%</td> </tr> </tbody> </table> <p><u>It is inferred from above that M/s.NTECL is not complying with the stipulations specified in the fly ash notification dated 14.09.1999 and its subsequent amendments. Further, unutilized fly ash is being disposed off in to the ash pond through lean slurry method in place of High Concentration Slurry disposal as stipulated. HDPE lining in the ash pond has not been provided.</u></p>	Year	Percentage of fly ash utilization	2012-13	0	2013-14	7.95%	2014-15	8.80%	2015-16	16.17%	2016-17	42.76%	2017-18	64.97%
Year	Percentage of fly ash utilization															
2012-13	0															
2013-14	7.95%															
2014-15	8.80%															
2015-16	16.17%															
2016-17	42.76%															
2017-18	64.97%															
xvi.	The treated effluents conforming to the prescribed standards shall be discharged in the lagoons along with circulating water of existing North Chennai TPS.	<p>Partly complied.</p> <p>The treated effluent after conforming to the TNPCB norms is discharged in to the sea through NCTPS lagoon. During the visit, it is observed that there is lot of leakages in the sea water intake pipeline and the pipelines connected to the Central Monitoring Basin (CMB) effluent which is being discharged outside the factory premises. PP has been advised to take immediate corrective action to stop the discharge of effluent outside the factory premises.</p> <p>As per the records made available during the visit, the temperature of the effluent is not exceeding 5 degree C above ambient water temperature of the receiving body.</p>														
xviii.	Greenbelt shall be developed all around the plant area, other utilities and ash pond covering at least 25% of the area.	<p>Not complied.</p> <p>Total area is 11139.97 acres. PP informed that they have planted about 16,480 saplings around the plant and in township area. However, detail regarding area covered under the green belt development has not been provided.</p> <p>It is observed during the visit that plantation work carried out by PP is not at all satisfactory and need lot of improvement.</p>														

<i>Sl.No</i>	<i>Conditions</i>	<i>Compliance Status</i>
		<i>Action plan for the green belt development in a time bound manner covering 25% of the project area shall be prepared and submitted to the Regional Office of the MoEF&CC at Chennai. "</i>

7. The above said monitoring report would *prima facie* indicate that the 5th respondent without adhering to the relevant norms, appears to have indulged in acts causing environmental degradation and also health hazards. It is also to be pointed out at this juncture that the consent granted by the 4th respondent had expired on 31.03.2018 and the application for CTO renewal has been submitted to the 4th respondent and it is yet to be acquired/obtained. Thus, a *prima facie* case has been made out for grant of interim order and in the absence of the same, the above said alleged act of the 5th respondent would definitely cause environmental degradation, pollution and health hazards and in that event, the people of that locality would also be affected and it may not be capable to set right at future point of time, which may result in irreparable loss and grave hardship and the balance of convenience as on today lies in favour of the petitioner.

8. Hence, there shall be an order of ad-interim injunction restraining the 5th respondent from dumping the soil or any other

material which would affect the marsh land, including the mangrove in S.No.1556 of Vallur Village, Thiruvallur District, Tamil Nadu till 18.12.2018. **Call on 18.12.2018.**

sk/pkn

[M.S.N.,J] [N.S.S.,J]
19.11.2018



WEB COPY

M.SATHYANARAYANAN, J.,
and
N.SESHASAYEE, J.,

sk/pkn



W.P.No.30237 of 2018

WEB COPY

19.11.2018