

(2001) 08 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1820 of 1999

Director General, Institute of Solid Waste Research and
Ecological Balance

APPELLANT

Vs

Ministry of Environment and Forests, Union of India (UOI)
and Others

RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21
Constitution of India, 1950 — Article 226, 32, 48A
Environment (Protection) Act, 1986 — Section 24, 3, 3(2), 5
Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 379, 411
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26

Citation : (2001) 08 AP CK 0031

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : M. Krishna Mohana Rao, for the Appellant; L. Narasimha Reddy, SC for Central Govt., E. Kalyana Ram, K.N. Jwala, SC for APSEB, K. Srinivasa Murthy, Vedula Srinivas, V. Ravinder Rao and Govt. Pleader for Industries, for the Respondent

Judgement

V.V.S. Rao, J.—Institute of Solid Waste Research and Ecological Balance (for short "the Institute"), represented by its Director Smt. N. Bhanumathi Das, W/o Sri N. Kalidas, has filed this writ petition praying for a writ, one in the nature of writ of mandamus restraining respondent Nos. 1 to 4 from allowing/dumping fly ash in ash ponds and other dumps by respondent Nos. 5 to 8, and a further direction to respondent Nos. 1 to 4 to regulate the supply of fly ash free of cost to the user industries as per directions issued by respondent No. 1 to 3 from time to time by eliminating middlemen.

2. The writ petition was treated as Public Interest Litigation. This Court in W.P.M.P. No. 2203 of 1999, by order dated 24-2-1999 directed respondent No. 4, A.P. Pollution Control Board to furnish particulars, as sought therein, viz., details

of all industries in the State of A.P. which generate fly ash. After receiving notice, the respondents filed their counters. The factual matrix in brief is as under:

3. The petitioner is an Association registered under the Societies Act, 1860.

4. The petitioner is an Association, it is alleged, was nominated by the Government of India as a member in various committees like National Waste Management Council, National Fly Ash Mission and National Coordination Committee in Building Centers. The research undertaken by the petitioner-institute reveals that respondent Nos. 5 to 8 are consuming more than 150 MT of coal per annum, and the solid waste in the form of fly ash to the tune of 65 MT, apart from 15 MT of bottom ash, is generated. The fly ash, which is super fine particles in the size of 1 micron to 100 microns escapes into the atmosphere, causing environment pollution. The Suspended Particulate Matter (SPM) contain hazardous heavy metals such as cadmium, nickel etc., which would cause ground water pollution. It also states that 65% of the fly ash can be used for making building materials.

5. The fly ash generated as waste is being precipitated and collected by means of Electrostatic Precipitators. The fly ash, which is dumped in the ponds, causes severe respiratory problems of thousands of people living around the area. The dumping of fly ash in the ponds consumed enormous extents of land, and at present more than 90,000 acres of land is converted into ash ponds. It will cause problems to small agriculturists, whose lands may have to be acquired for dumping of fly ash. The cost of dumping of fly ash in the ponds works out approximately from Rs. 80/- to Rs. 120/- per ton. In most of the Industrialised countries 30-80% of the fly ash is utilised for manufacturing cement bricks and other building materials. The petitioner, as alleged, has demonstrated a simple technology by means of which bricks can be made by using fly ash, lime and gypsum. Bureau of Indian Standards also permits mixing of Portland cement with 25% fly ash for making Portland Pozzolana Cement, which is said to be more durable than the former. If the fly ash is utilised profitably rather than dumping it in ash ponds, it would benefit the country to the tune of Rs. 5,000 crores per annum. The petitioner has prepared a paper for the Government on the proposed National Fly Ash Policy in May 1996. The petitioner, in the said paper recommended deterrent action in the form of imposition of huge taxes against those industries, which indulge in dumping of fly ash in ponds. It also recommended increase in excise duty on Portland cement so that people would opt for Portland pozzolana cement. The petitioner gave representations to the Standing Committee of Parliament on Industry for incorporating of an action plan to promote the use of blended cement, but the Government of India has not taken any concrete or tangible steps. Respondent No. 2 issued circular dated 10-9-1991 laying down guidelines to be followed by power plants, which generate fly ash, as regards the management thereof. One of the guidelines stipulates supply of dry fly ash free of cost to entrepreneurs. The Government of Andhra Pradesh also issued an order being G.O.Ms. No. 236, dated 10-7-1998

directing the Government Departments to switch over to fly ash bricks. By G.O.Ms. No. 101, the Government announced certain investment subsidies to fly ash brick manufacturing units.

6. The above steps have been taken only in relation to public sector undertakings plants, which generate fly ash, and if same such steps are taken in relation to private sector undertakings, which generate fly ash, pollution caused by fly ash, can be minimised if not reduced. Therefore, the petitioner has filed the present writ petition.

7. A.P. Pollution Control Board (for short "the APPCB") has filed counter affidavit inter alia stating that dependence on coal for about 65% of power generation, is bound to affect the environment with high levels of SPM in the air. Thermal power plants in India generate huge quantity of fly ash per year, and that only 10% of the fly ash is utilised for manufacturing blended cement, pre-cast bricks, hollow bricks and related construction/ interior materials. The Government of Andhra Pradesh in Industries Department has issued various G.Os. bearing G.O.Ms. No. 101, dated 4-4-1998, G.O.Ms. No. 19, dated 16-4-1998 and G.O.Ms. No. 236, dated 10-7-1998, to encourage the use of fly ash by providing subsidies like investment subsidy, and encouraging utilisation of blended cement and fly ash bricks in all Government civil works. The Government of Andhra Pradesh in Environment and Forest and Science & Technology Department also issued G.O.Ms. No. 19, dated 11-2-1999 inter alia directing supply of fly ash free of cost directly to cement and building material manufacturers without any middlemen.

8. The officials of APPCB inspected respondent No. 7, which produces 155 TPD (tons per day) of fly ash, and that it engaged a contractor to lift fly ash and dump it in an abandoned pit of 50" depth, which is surrounded by quarry mines. The fly ash is directly loaded into trucks from hoppers to be transported to the dump. Air pollution control equipment has also been upgraded. During inspection, the official of respondent No. 7 informed that they are willing to supply fly ash free of cost to brick manufacturing units provided the brick-manufacturing units bear the transport expenses. The allegation that respondent No. 7 has a fly ash pond in Godavari River is not correct.

9. Meeting of the State Level Fly Ash Utilisation Committee was convened on 19-3-1999 and 13-7-1999 at Hyderabad to deliberate on the hazards caused by environmental pollution by reason of dumping of fly ash in ash ponds. The Committee recommended that the Government should take up the matter with the Ministry of Surface Transport to provide detailed specifications for the release of fly ash. The Committee also suggested insistence on thermal power plants to have fly ash distribution depots at Hyderabad. At present the APPCB is not permitting any new ash pond development. It is insisting on dry disposal of fly ash from power plants. It is stated that the Government of India has issued a Notification vide SO 763(E), dated 14-9-1999, containing guidelines for disposal of ash, in compliance with the directions issued by the High Court of Delhi in W.P.

No. 2143 of 1993, dated 25-8-1999.

10. On behalf of Respondent No. 5, the Special Officer of A.P. Generation Corporation (for short The A.P. GENCO), the successor of APSEB, filed counter affidavit contending that ash ponds are situated away from human habitation and barren lands to avoid dust nuisance, and that the leach of trace metals is a remote possibility because the ash ponds are located in permeable soils or fissured grounds. The ash generated in power stations is pumped into ponds, and a water layer is always maintained to prevent flying of ash. A clay layer is also laid over the ash ponds to prevent flying of dry ash during summer season or due to high winds to prevent environment hazards in the surrounding areas. So far no respiratory problems have been reported by any one at any of the thermal power stations of AP GENCO.

11. A team of international and local experts conducted a study on pollution impacts on ground water and surface water due to ash ponds for two years from 1-10-1994 at NTPC, Ramagundam. The said study concluded that the impact of pollution is very limited as the ponds are mostly located in clayey soils. As per the studies, in the long run, the potential of pollution will be negligible. As per the norms of Central Electricity Authority (CEA) lands for ash ponds, power houses, colonies etc., are being acquired. As per CEA norms, for one megawatt power, out of 2.5 acres of land, one acre of land has to be earmarked for ash pond, which is generally barren non-agricultural and away from human habitation.

12. APSEB issued BP Ms. No. 93, dated 13-7-1993 inter alia directing release of fly ash from the fields of ESP hoppers free of cost to small scale industries involved in manufacturing cement, and at a nominal price of Rs. 80/MT to cement manufacturers other than SSIs so as to meet the expenditure incurred on collection of ash. AP GENCO is taking all necessary steps for the proper maintenance of ponds. Fly ash is not posing any environmental hazard, and if any order is passed restraining AP GENCO from dumping fly ash into ponds, it would affect the power generation and power plants will have to be closed down.

13. Respondent No. 8- Rashtria Ispat Nigam Limited (Visakhapatnam Steel Plant) filed counter stating that the allegations made by the petitioner in the writ affidavit are very vague. The respondent No. 8 has established thermal power plant with a rated capacity of 247.5 MW, which can use oil, coal or gas for generation of power. With full utilisation capacity, the maximum fly ash generation is about 2,520 TPD. The actual generation, however, is much less for other fuels also are used in the generation of power. The steel plant has generated about 4.1 MT of fly ash in 9 years from 1990-99 and is sending fly ash in slurry form into ash ponds to prevent escape of fly ash into the atmosphere by the blowing of winds, and that the storage of fly ash in the form of slurry is time tested and environment friendly.

14. The dumping of fly ash in slurry form in the ash pond is as per the design

provided by their consultant M/s Dastur & Company. As early as on 4-1-1988, the Department of Environment, Forests and Wild Life, Government of India, accorded environment clearance, and imposed certain conditions therein to be complied with by respondent No. 8. That respondent No. 5 has also issued consent orders u/s 21 of the Air Act and Sections 25 and 26 of the Water Act, imposing certain conditions therein to be complied with. APPCB has not made any adverse remarks with respect to disposal of fly ash. Respondent No. 8 is periodically monitoring the quality of ground water in the neighbouring wells and also observing ambient air quality near the ash pond is satisfying all the parameters/norms, and the quality of water also has not shown any degrading effect.

15. Adverting to utilisation of fly ash, it is stated by respondent No. 8 that the steel plant is willing to supply fly ash free of cost, but due to socio-economic reasons, the utilisation of dry and wet fly ash is very low because high capital investment is required to change to new technology for making use of fly ash. Respondent No. 8 has entered into Memorandum of Understanding with M/s TECHSEARCH, Australia for supplying wet fly ash for a period of 10 years, to enable the said company to produce burnt clay bricks, and that in that connection, it has also given a part of its land on lease. Respondent No. 8 is inclined to enter into similar Memorandums of Understanding with entrepreneurs and industries who intend to utilise wet fly ash for any beneficial purpose. It is also stated that respondent No. 8 is the youngest integrated steel plant in India, and that it adopts the most modern and state-of-the-art technology with emphasis on energy conservation, waste heat utilisation, water conservation and solid waste utilisation. It is a wide array of air pollution control systems, effluent treatment and recycling systems, water treatment plants, and gas cleaning and recovery systems. That it is spending about Rs. 83 crores per annum for the maintenance and operation of the aforementioned systems. It has also undertaken massive afforestation to provide green plant, and in this programme, it has grown about 34 lakh trees in an extent of 3,76 hectares.

16. As per Clause 2(3) of the Gazette Notification, dated 14-9-1999, which is applicable to the thermal plant at Visakhapatnam, 15 years time has been given up to 13-9-2014 for increasing the utilisation of fly ash in a phased manner up to 100%. Under these circumstances the dumping of fly ash in ash ponds cannot be stopped immediately. That it has already started work to meet the deadline for compliance with the directions issued by the Government of India in the aforementioned notification.

17. The petitioner has filed reply-affidavit to various counter affidavits denying/clarifying its position on various aspects of the matter.

18. Sri M.S. Ramachandra Rao, the learned Counsel for the petitioner submits that the fly ash generated in all the thermal plants- both in the private sector as well as the public sector, has a great potential of causing health hazards, besides being a singular cause of atmospheric pollution in the area where thermal plants

are located. He submits that if the thermal power plants supply the dry fly ash, free of cost to all the small-scale units involved in manufacturing cement, the same would not only be beneficial to the entrepreneurs, but also helps to reduce pollution of the environment.

19. The learned Counsel for APPCB, AP GENCO and Rashtriya ISPAT submit that even as per the Government of India Notification dated 14-9-1999, all the units which generate fly ash as waste have been given time up to 2014. That all the units are willing to supply fly ash free of cost provided the entrepreneurs who require the fly ash bear the transportation costs. The learned Counsel for respondent No. 7 submits that the writ petition cannot be treated as Public Interest Litigation because Sri N. Kalidas, the husband of the petitioner, whose request for supply of fly ash on his own terms and conditions, was rejected by respondent No. 7, and due to that reason, he got filed the present writ petition. The petitioner bore grudge against respondent No. 7. The writ petition filed by the petitioner as PIL is not bona fide, for it is filed with an oblique motive for personal gain and not in the interest of the general public.

20. It is no doubt true that respondent Nos. 5, 6 and 8 in the public sector and respondent No. 7 in the private sector, by reason of their industrial activity are generating fly ash. That the fly ash causes adverse and hazardous effects to human life and the environment, is not denied.

21. In this context we may refer to an article titled "Problems in Fly Ash Disposal and Environmental Pollution" by M. Ulaganathan and T. Mathevan Pillai. In the said paper, it is stated that "fly ash results in air pollution, surface pollution, water pollution through particulate discharge and the problem of losing large area of agricultural land. The fly ash from chimneys contains high quantities of sulphur dioxide, nitrogen oxide, and carbon monoxide. The fine particles of fly ash create great nuisance to people living near the industries. When carbon monoxide is inhaled, it displaces oxygen in blood and reduces the amount of oxygen carried to the blood; sulphur dioxide causes injury to the respiratory system. That there is possibility of water from slurry seeping into soil, causing water logging in the area and contaminating the underground resources or aquifers. The two authors pointed out that fly ash produced in Indian thermal power plants causes serious problem because it contains toxic trace elements like selenium, arsenic, chromium, nickel etc.

22. We may also refer to the report of a research study undertaken by M/s R.J.P.M. Platenburg, Dr. H.A. Jenner and Dr. R.N.J. Comans of Netherlands under Indo-Dutch Cooperation. The research paper titled "Environmentally Sound Ash Pond Management Case Ramagundam" records the certain conclusions in regard to the adverse environmental effects of fly ash and fly ash ponds. It is apposite to refer to some of the relevant conclusions.

Water Quality Assessment:

* XXXX

* xxxx

* xxxx

* Surface water is affected by the ash pond effluent. This is caused by high PH, increased EC and concentrations of barium, which are substantially higher than those of the base flow. The concentration of boron, arsenic, molybdenum and chromium show a moderate to slight increase if compared to background water quality.

* Infiltration of surface water to ground water (river bank infiltration) is likely to occur due to the perennial flow. EC values of various (mainly hand dug) wells are clearly increased, together with barium and boron contents.

Water quality predictions:

* The prediction of leachate concentrations show that sulphate and molybdenum concentrations, will strongly decrease shortly after completion of filling. By contrast, the concentration of fluoride, barium and to a lesser extent boron will remain fairly constant during the decades after completion.

* On the short-term the predicted fluoride, sulphate and boron levels may exceed water quality standards for effluents, surface water and drinking water, on the long-term this is only expected for fluoride. The actual impact to ground water is expected to be less due to conservative assumptions and due to observed fluoride concentrations in the ash pond.

* On the long-term the ash pond evolves a soil-like material (through weathering) with properties very similar to (fertile) soil of volcanic origin (and soils). At this stage, which is reached after several decades to more than hundred years, the pollution potential of the ash pond will be negligible. The expectation should be verified.

Risk Assessment:

* Water related risks for public health due to impact from the ash pond (Operation) are not expected. However, it is advised to avoid abstraction of ground water under or very near to the ash pond for drinking purposes. Surface water with ash pond effluent is not suitable for drinking as well.

* The hydro geological situation around the N2-pond may create water logging problem downstream the main ash pond dyke. Therefore also ground water quality deterioration may occur. The limited water logging beyond the dyke near Rajapur is expected not to increase drastically.

* Irrigation with ash pond effluent may affect crop yields, as PH and EC, amongst which is potassium, are relatively high. To what extend farmers have adjusted their cropping patterns is not known.

* The main potential risk for public health concerns the wind blown ash. Regularly wind blown ash (particles) can be observed above and around the ash

pond. Whether the ambient air standard is exceeded, was not investigated.

23. There cannot, therefore, be any denial of the scientific studies dealing with fly ash pollution, which was also subject matter of international conferences and workshops. The fly ash produced in coal/lignite based thermal power plants and industries where coal/lignite fired boilers are used for production of heat energy, is detrimental to animal life. The fly ash contains excessive SPM and fly ash ponds in the short run as well as in the long run do lead to irretrievable negative environmental impact on the nature. In Vellore Citizens Welfare Forum Vs. Union of India and others, the Supreme Court accepted the concept of "Sustainable Development" as part of Indian Environmental Law. It was observed:

The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere "Sustainable Development" as a concept came to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the varying capacity of the supporting ecosystems. "Sustainable Development" as defined by Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs".

24. What is sought to be contended in is that dumping of fly ash in ash ponds is creating environmental hazards, and therefore, such dumping should be stopped immediately. It is further contended that respondent Nos. 5 to 8 should be directed to supply fly ash free of cost to the user industries as directed by respondent Nos. 1 and 2 as also respondent No. 3 by eliminating middlemen, and in that behalf a prayer is made seeking directions to respondent Nos. 5 to 8 to supply fly ash free of cost directly to the user industries.

25. Before we examine the aforementioned issue, it will be appropriate to deal with the objection raised by respondent No. 7 that the petitioner has filed the writ petition with an oblique motive for the personal gain of her husband Sri N. Kalidas, whose request for supply of fly ash on the own terms and conditions was rejected by respondent No. 7. The relationship of the Director of the petitioner-Institute, who has affirmed the affidavit before this Court with the said N. Kalidas is not denied. To counter the allegation of respondent No. 7 that the writ petition has been filed for personal gain and to settle scores with respondent No. 7, the petitioner has filed reply affidavit stating as under:

With reference to Para 2(1) deny that the petitioner has omitted to state certain facts deliberately or otherwise or that the writ petition was filed with an oblique motive. It is denied that the writ petition is not Public Interest Litigation and that it was filed for personal gain of the Director of the petitioner association or with an intention to settle his account with the respondent No. 7. It is denied that as against the respondent No. 7, the writ petition has no public interest and it is private litigation purely. I submit that these allegations are being made solely to prejudice the mind of the Hon'ble High Court and divert its attention from the

illegal activities of respondent No. 7.

26. Respondent No. 7 is a company engaged in the business of manufacturing and marketing paper. Admittedly, it uses/operates coal fired boilers at their mills to generate steam require in the manufacture process. This results in high quantities of fly ash from boilers. Be that as it may, respondent No. 7 and FABMAS, whose President is the husband of the Director of the petitioner company, entered into a Memorandum of Understanding (MOU) ON 24-12-1997, which inter alia provides for removal of a minimum of 70 MT, equivalent to seven trucks per day of fly ash from the hoppers of respondent No. 7 by paying an amount of Rs. 50/- per truck towards administration/security charges. It appears that the parties to the MOU could not work the same efficiently, and ultimately on 21-8-1998 Sri Kalidas, President of FABMAS wrote to the Vice-President (Administration) of respondent No. 7 resiling from the MOU. The said letter reads:

Please refer my another telecon this evening during which you have confirmed that the contract is already awarded for the total 90,000 tpa of fly ash to a middleman.

As you have taken this unilateral decision, I withdraw from my offer to come for discussions as communicated to you vide my fax of date. A whip is already circulated to all our members by which the members of Visakhapatnam would use the fly ash from Adman Jodi and the members of East Godavari would use fly ash from Vijayawada Thermal Power Station which are far superior to that of APPM.

You are responsible for this unpleasant development and you would also be answerable to the environment, administration and Government, for your hostile approach to jeopardise the fly ash utilisation program of the Government that would, in turn cause accumulation of fly ash in and around Rajahmundry.

27. Yet another aspect of the matter is that the petitioner filed a writ petition before the Hon"ble Supreme Court under Article 32 of the Constitution of India being W.P.(C) No. 439 of 1997. The said writ petition was dismissed on 11-9-1997 observing thus:

No doubt the question raised in this writ petition is of considerable significance in the sphere of preservation of ecology and environment and to prevent air and water pollution, but that is a matter of policy for the concerned authorities in the Government to examine and decide. In our opinion, the remedy under Article 32 of the Constitution of India in the matter is inappropriate. Learned Counsel, therefore, seeks leave to withdraw the writ petition. The writ petition is dismissed as withdrawn.

28. Though the writ petition filed by the petitioner was dismissed on the ground that it is a matter of policy for the concerned authorities to examine and decide, the petitioner did not seriously pursue the matter thereafter. Only after the efforts of FABMAS to get fly ash from respondent No. 7 fizzled out that the

petitioner filed the present writ petition on 27-1-1999. Even in the writ petition, stress seems to have been be in seeking directions to respondent Nos. 1 to 4 to regulate the supply of fly ash by eliminating middlemen. The cumulative effect of the aforementioned facts and circumstances lend credence to the allegation of respondent No. 7 that the writ petition filed by the petitioner is not bona fide and it is filed with an oblique motive for personal gain. It is well settled law that this Court is entitled to examine the bonafides of the person who seeks intervention of the Court in exercise of its jurisdiction under the Public Interest Litigation.

29. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, the action of the Government of West Bengal in leasing a part of Alipore Zoo in Calcutta for construction of a five-star hotel was challenged. While observing that when any complaint is made that Government action is contrary to Article 48-A of the Constitution of India, obliging the State to protect and improve the environment, the Apex Court held, that the Court must examine whether appropriate considerations are borne in mind and irrelevancies excluded and that the Court may also give necessary directions without resorting to nicely balanced relevant considerations, which can only be resorted to by the executive. The Apex Court further held that Public Interest Litigation at the instance of the petitioner thereon is not bonafide. Justice Khalid in his concurrent opinion while observing that there is something more than what meets the eye, observed:

...Public Interest Litigation has now come to stay. But one is led to think that it poses threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public Interest Litigation, the traditional litigation will suffer and the Court of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

(Emphasis supplied)

30. In AIR 1991 420 (SC) , the facts are as follows: The petitioner therein, who was an influential businessmen, obtained licence for coal trading. He approached Tata Iron and Steel Company with a request to supply him more quantity of slurry from West Bokaro Collieries at Ghatotand. The said request was refused. The petitioner, therefore, removed the slurry unauthorisedly. A criminal case was filed against him under Sections 379 and 411 IPC read with Section 7 of the Essential Commodities Act. When the matters were pending before the Court of the Judicial First Class Magistrate, Hazaribagh, the petitioner initiated proceedings before the High Court of Patna, under Article 226 of the Constitution of India, seeking directions for permitting him to collect slurry from agricultural land, and the same was dismissed. He then filed another writ petition seeking a direction to the Deputy Commissioner to implement the Full Bench Judgment of the High Court to the effect that slurry, which came from the washeries can be sold by the State Government to any person without sanction of the Central Government. Having failed in his contention that the company had no right to

sell the slurry discharged from the washeries, the petitioner again filed writ petition before the Supreme Court seeking directions to the Director of Collieries to restrain West Bokaro Collieries from discharging slurry/sludge from the washeries at Ghatotand into Bokaro River. The Supreme Court having noticed the facts from various counter-affidavits filed on behalf of the official and unofficial respondents declined to entertain the writ petition as PIL. It is observed therein:

...Right to live is a fundamental right under Article 32 of the Constitution of India and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air, which may be determined to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public Interest Litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity....

(Emphasis supplied)

31. In *Malik Brothers v. Narendra Dadhich* (1990) 6 SCC 552 after referring to the observations made by Justice Khalid in *Sachidanand's Case* (supra) the Supreme Court held:

...it is necessary to bear in mind that a public interest litigation is usually entertained by a Court for the purpose of vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights. The directions and commands issued by the Courts of law in public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of a Public Interest Litigation actually an individual's interest is sought to be carried out or protected, it would be the bounden duty of the Court not to entertain such petition as otherwise the very purpose of innovation of Public Interest Litigation will be frustrated. It is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of the downtrodden mass for the redressal of their grievance.

(Emphasis supplied)

32. The law, therefore, may be taken as well settled that if the Court finds that in the garb of PIL an individual's interest is sought to be protected, it would be the bounden duty of the Court not to entertain such petitions as otherwise, the very purpose of PIL will be frustrated.

33. The facts of the case in *Subhash Kumar* (Supra) and the facts of this case are

almost similar. To our mind, the husband of the petitioner who is the President of FABMAS having failed in his efforts to do away with middlemen in the sales/supply of fly ash by respondent No. 7, has chosen the medium of PIL. Such person cannot be allowed to tap the doors of this Court, for he has in his mind foremost personal interest rather than public interest. We therefore, hold that the writ petition filed is not bonafide.

34. Nonetheless, as observed by the Supreme Court in its order dated 11-9-1997 in W.P. (C) No. 439 of 1997 the question raised in this writ petition is of considerable significance in the sphere of preservation of ecology and environment and to prevent air and water pollution. By virtue of the Notification SO 763(B) dated 14-2-1999, the Government of India in exercise of powers conferred on them by Sub-section (1) read with Clause (v) of Sub-section (2) of Section 3 and Section 5 of the Environment (Protection) Act, 1986 (for short "the Act") framed policy guidelines. We need to examine this aspect of the matter.

35. A reading of the Notification SO 763(B) dated 14-2-1999, issued by the Ministry of Environment and Forests reveals that the High Court of Judicature, Delhi, by order dated 25-8-1999 in W.P.(C) No. 2145/99 in Center for Public Interest Litigation, Delhi v. Union of India, directed the Government of India to publish final Notification in respect of fly ash on or before 26-10-1999. Having recognised the necessity to protect the environment, conserve top soil and prevent the dumping and disposal of fly ash discharged from coal or lignite based thermal power plants on land, and having realised the need for restricting excavation of top soil for manufacture of bricks and promote the utilisation of fly ash in the manufacture of building materials and construction activity within a specified radius of 50 KM from coal/lignite based thermal plants. The Central Government issued directions vide the aforementioned Notification.

36. The aforementioned Notification is in three parts. Part I deals with use of fly ash, bottom ash or pond ash (hereinafter referred to as "fly ash") in the manufacture of bricks and other construction activities. Part II deals with utilisation of ash by thermal power plants, and part III lays down specifications for use of ash based products.

37. As per directions referred to in Part I, manufacture of clay bricks or tiles or blocks without mixing at least 25% of fly ash, bottom ash, or pond ash with soil on weight-to-weight basis is prohibited within a radius of 50 KMs, from the thermal power stations. Any violation of the said direction would entail in cancellation of the consent order issued by the APPCB to the brick kiln as well as cancellation of the mining lease. The thermal power plant is required to constitute a Disputes Settlement Committee. Part II contains guidelines as to how coal or lignite based power plants shall use the ash generated in the power plants. As per Para 2(1) every thermal power plant shall make available ash for at least 10 years from the date of publication of the Notification without any payment or any other consideration for the purpose of manufacturing ash bricks, panels or any other material or for construction of roads, embankments, dams,

dykes or for any other construction. Under Para 2(2), an obligation is cast upon the power plants to phase out dumping of fly ash on land within a period of 9 years from the date of Notification, and in that direction, it shall stipulate an action plan and implement it subject to environment clearance. The action plan should provide for 30% fly ash utilisation within 3 years, and thereafter the utilisation of fly ash has to be increased by 10% every year for the next six years. Part III of the Notification deals with specifications for use of fly ash based products, which have to be in accordance with the specifications laid down by Bureau of Indian Standards, India Bureau of Mines, Indian Red Cross, Central Building Research Institute, Roorkee etc.

38. It is not denied by respondent Nos. 5 and 6 to 8 that they are bound by the directions of the aforementioned Notification, for they have been issued under Sections 3 and 5 of the Act. Indeed respondent Nos. 5 and 8 in their counter-affidavits while adverting to the said Notification stated that they are ready and willing to supply fly ash free of cost to the needy industries. Yet another aspect of the matter is that respondent No. 5 appears to have been supplying fly ash at the rate of Rs. 80/MT in accordance with the Board proceedings. This, in our view, is contrary to para 2(1) of the Government of India Notification dated 14-9-1999. All the fly ash generating thermal power plants/industries are bound to make available fly ash to the needy industries, without any payment or consideration. Respondent No. 5 or any other thermal power plant in the State of Andhra Pradesh, therefore, cannot be permitted to supply or make available fly ash on payment basis. They have to supply fly ash, bottom ash or pond ash, free of cost to the needy industries having regard to the overriding effect given to the provisions of the Act, by virtue of Section 24 thereof, which says that "the provisions of the Act, Rules or Orders made there under" shall have effect notwithstanding anything inconsistent contained in any other enactment. This legal position is not seriously disputed before us.

39. The Central Government issued Notification under Sections 3 and 5 of the Act, which only deals with fly ash produced in the coal/lignite based thermal power plants in public sector. The same may not apply to respondent No. 7, which is a private sector, and is not a thermal power plant. It is, however, admitted by respondent No. 7 that they are operating coal fired boiler, which also results in huge quantities of fly ash. We may also record that respondent No. 7 stated before us that they are willing to supply fly ash to manufacturers of products like bricks, cement, etc., provided the users bear the transport expenses. Be that as it may, the Government of Andhra Pradesh in Industries and Commerce Department has issued orders in G.O.Ms. No. 101, dated 4.4.1998, G.O.Ms. No. 118, dated 16-4-1998 and G.O.Ms. No. 236, dated 110-7-1998 given investment subsidies to fly ash based brick manufacturing units subject to a ceiling of Rs. 20.00 lakhs. In the third G.O., referred to hereinabove, the Government ordered that in all civil works, except bridges, in Government Departments, the authorities shall switch over to Portland Pozzolona /slag cement and use fly ash bricks subject to availability. The

aforementioned three G.Os., also cannot be said to govern the situation vis-a-vis respondent No. 7. However, the Government of Andhra Pradesh in Environment Department, issued another order being G.O.Ms. No. 19, dated 11-2-1999, directing that all thermal power plants and industrial units generating fly ash in the State be asked to supply fly ash free of cost directly to cement manufacturers without middlemen, or in the alternative, the industrial units should undertake that they will effectively utilise the entire quantity of fly ash generated by them in stead of stocking or using for landfills. The Government also directed that the fly ash utilisation aspects be propagated widely. Therefore, there cannot be any doubt that respondent No. 7 is bound to implement to policy guidelines contained in G.O.Ms. No. 19 dated 11-2-1999. Respondent No. 7 may not engage any middlemen for supply of fly ash to brick and cement manufacturers.

40. Having regard to the importance of the matter in the field of ecology and environment, we dispose of the writ petition with the following directions:

1. The A.P. Pollution Control Board (respondent No. 4) herein, being the authority for ensuring the use of specified quantity of fly ash, bottom ash or pond ash, shall ensure implementation and strict adherence of the directions issued by the Government of India vide Notification SO 763(B) dated 14-9-1999 published in the Gazette of India, Extraordinary 563, of even date;

2. The Government of Andhra Pradesh and APPCB (respondent Nos. 3 and 4) shall implement the directions issued by the Government of India. In the aforementioned Notification dated 14-9-1999 without fail, let or hindrance, and the Government of A.P. may constitute a Committee for regularly monitoring the implementation of Central Government guidelines;

3. The thermal power plants, whether coal based or lignite based, established in the State of Andhra Pradesh, by APGENCO and/or National Thermal Power Corporation Limited, shall supply or make available, fly ash, bottom ash or pond ash to the manufacturers of ash bricks, panels or other material or for construction of roads etc., free of cost without demanding any payment;

4. Direction No. 3 above is equally applicable to respondent No. 8, which is admittedly running 240 MW thermal power plant;

5. Respondent No. 7, A.P. Paper Mills, Rajahmundry, is directed to strictly follow G.O.Ms. No. 19, Environment, Forest, Science Department and supply fly ash free of cost to cement manufacturers without any middlemen and/ or in the alternative to undertake or promote schemes for effective utilisation of fly ash as was done by respondent No. 8;

6. APPCB as well as the Directorate of Industries should regularly inspect the thermal power plants and other industrial units, which generate fly ash and see that they strictly implement the Government of India guidelines and/or the various executive instructions/ orders issued by the Government of Andhra

Pradesh.

There shall be no order as to costs.