

THE PRICE OF POWER GENERATION
(STUDY OF LAND REALLOCATION FOR FLY ASH IN CHHATTISGARH)

-Amit Kumar¹

ABSTRACT

The researcher in this paper is going to discuss the existing scenario of land acquisition and land reallocation for construction of fly ash dam. The paper will focus on the practices taking place in Chhattisgarh. The researcher will try to observe whether they are in accordance with the existing laws and legislation on same topic. Further, there will be a comparison of pros and cons of such reallocation where the highlight will be the degrading environmental conditions in Chhattisgarh. The researcher will give his opinion on this entire issue and will try to give suggestions to improve the situation.

INTRODUCTION

Chhattisgarh is considered as the power hub of our country. Being home to Asia's largest open shaft coal mine, it is obvious that there is abundance of coal in Chhattisgarh. This vicinity to the vital resource, made it economically feasible to establish numerous thermal power plants and many other industries. By beginning of 2016, there were at least 10 thermal power plants in Chhattisgarh.² Out of these 10 power plants, the two power plants namely N.T.P.C. Korba and N.T.P.C. Sipat are considered as super thermal power station and are among the top ten thermal power plants in our country.³ It is true that these power plants are doing good production, they are making good business. They also provide immense employment opportunities and acts as the torch bearers for economic development in these areas.

However, in all these song singings of the 'good' these thermal power plants do, the plight of the local and indigenous people gets unheard. One such cause of the plights is the improper management of waste. The thermal power plants of Chhattisgarh surely do get coal from the mines, but there is one more resource which is needed – that resource is land and reference is not made to the land needed for establishment because that investment is like

¹ Amit Kumar, Year III, B.A.L.L.B. (Hons.), NALSAR University of Law, Hyderabad.

² Envis Centre on Flyash, List of coal based thermal power stations in India up to 2016, <http://cbrienvi.nic.in/Thermal%20Power%20Station%20in%20India%202016.pdf>, (last updated on Dec 9, 2016).

³ *Top Ten Biggest thermal power plants in India*, Power-technology.com, Oct 10, 2013.

sink cost – an investment needed to get the returns. Here, in this paper, the researcher will talk about the land needed to dump harmful waste materials – in specific – fly ash.

Dictionary meaning of fly ash is – *'fine solid particles of ashes, dust, and soot carried out from burning fuel (as coal or oil) by the draft.'*⁴With regard to its impact on human health and environment, fly ash is considered extremely harmful for the health.⁵ Even for environment, fly ash is a threat.⁶ For these and many more reasons, the tribal communities and indigenous people have opposed to creation of fly ash dams and from giving away their land for such construction. But in spite of constant opposition, the government keeps on allotting land for construction of fly ash dams. Also, with time, currently these sites are constructed at very near vicinity of the villages and other residential areas, therefore increasing the threat multiple times.

To understand this situation, in the subsequent part, the researcher will discuss the existing laws with regard to fly ash and its management.

EXISTING LAWS AND LEGISLATION

The Government of India in its notification issued on 4th April 2016, gave certain rules and guidelines on hazardous waste management rules be called the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Interestingly, despite of multiple medical research and studies, he order separated fly ash from category of hazardous waste and kept it in separate class of high volume low effect waste. The only relevant point in that notification with respect to fly ash is that fly ash is mentioned in schedule VI an all the entries of schedule VI are banned from import.⁷

In past, there has been notification giving some more insight on issue of fly ash. The government notification of 1999 gives guidelines for fly ash management. The major aim of the guideline was promote reuse and recycle of fly ash. It made usage of fly ash in brick construction mandatory in areas within 50km radius around a thermal power plant. Further it

⁴ Fly Ash, Merriam-Webster, (October 12, 2016), <http://www.merriam-webster.com/dictionary/fly%20ash>.

⁵ Mark Martin, *Coal Communities Fear 'Fly Ash' Poses Deadly Threat*, CBN News, April 14, 2013.

⁶ Barbara Gottlieb, Steven G. Gilbert, Lisa Gollin Evans, *Coal Ash – The toxic threat to health and environment*, PSR.

⁷ Notification, Ministry of Environment, Forests and Climate Change, Jan 25, 2016.

put a dive steps to promote usage of fly ash.⁸ With subsequent amendments, the radius increased from 50km to 100 km and currently in 2016, the radius is 300km.⁹

ARE EXISTING LAWS EFFICIENT?

To understand this part, we look into the Central Electrical Authority's report submitted in October, 2015.

According to this report, out of 34 power plants which achieved fly ash utilization of 100 % or more, there are only two power plants which are situated in Chhattisgarh. Similarly in range of fly ash utilization from 100-75%, there are two more plants. Remaining all six other plants are in range of utilization below 60%. When we go by numbers, these numbers don't appear very poor. This number appears similar to many other states. But, when we start looking into the amount of unutilized fly ash, the picture turns grave. All the power plants which are in range of utilization below 60% are high capacity power plants. They produce enormous amount of fly ash every day. And their utilization is mostly in range of 30-40%.¹⁰ As a result, out of the 20 million tonnes of fly ash being produced annually, around 70% of quantity remains un-utilized. With time, the cumulated amount of fly ash has reached a dangerous level and its management has turned into a nightmare.

This year, National Green Tribunal asked Chhattisgarh state government to look into the issue and to submit a comprehensive report on fly ash utilization in the state. In it observations, the Centre for Science and environment found that a major reason for under utilization is due to disagreements and lack of consensus between N.T.P.C. and S.E.C.L. The body tried to conduct a meeting along with all the big power plants in the area to look into this matter.

The finding of report also helps in understanding why it is turning difficult for Chhattisgarh to increase fly ash utilization, where other states have performed satisfactorily. First reason is that the power generation in Chhattisgarh is much more than the states which managed to reach sustainable level. As a result, in spite of being third highest fly ash utilising state, it lacks behind based on percentage of unutilized fly ash, Secondly, A major utilization of fly ash is brick industry, and currently, consumption level of bricks in Chhattisgarh is much less

⁸ Notification, Ministry of Environment, Forests and Climate Change, Sept 14, 1999.

⁹ *supra* 6.

¹⁰ *supra* 1.

than the supply – in clear figures – CSE claims that 13 million fly ash brick cans be made whereas, demand is only for 5 million.¹¹

For this reason, after the allotted ash ponds are over their capacity, they all start looking for new places to dump the waste. In 2011, a petition was filed by a resident of Churikala village of Korba, against the allocation of land for deposition of fly ash and subsequent establishment of Vandana Power plant in churikala.¹² Subsequently gram Sabhas were conducted according to Panchayat (Extension to Schedule Areas) Act, 1996.¹³ The villagers opposed this in the gram sabha. But, in spite of opposition, the district collector went ahead and went for land acquisition using his special powers under section 17(1) of Land Acquisition Act of 1984.¹⁴ Even after the construction of that power plant, it is not under function because of lack of site for dumping fly ash.

THE QUESTION OF POLLUTION

As a result of unplanned and hasty promotion of industries and power plants all around, Chhattisgarh suffered from high level of pollution. According to Central Pollution Control Board, 2009, Korba was fifth most critically polluted district of India. And in subsequent years, the condition has not improved. Even the 2014-2015 Annual Report of the Union Ministry of Environment & Forest identified Korba as a critically Polluted area (CPAs).¹⁵ This issue of pollution is not just concerning Korba, but the other cities of states are also heavily polluted and the conditions are not getting any better. In 2005, the Central Pollution Control Board (CPCB) declared Raipur as most polluted City.¹⁶ And even Raipur's track record didn't improve with time and it continued to feature on list of most polluted cities of the country in coming years.¹⁷

In response, government did attempt to take certain steps such as prohibiting old vehicles from running on the roads¹⁸, but these steps are not sufficient to deal with this gigantic issue.

¹¹ Anupam Chakravarty, *MoEFCC revises fly ash notification*, Down To Earth, March 18, 2016.

¹² News Agency, *Power plants insulated from protests, villagers shocked*, The Hindu, February 5, 2011.

¹³ *id.*

¹⁴ Section 17(1), Land Acquisition Act, 1984.

¹⁵ Staff reporter, *Korba ranks third in new critically polluted areas*, The Pioneer, Aug 5, 2015, Raipur.

¹⁶ *Raipur: the most polluted city*, Down to Earth, Oct 15, 2005.

¹⁷ Rashmi Droilal, *Chhattisgarh Capital Raipur 7th most polluted in the World: WHO*, The Times of India, May 13, 2016.

¹⁸ PTI, *Chhattisgarh govt. To ban 10 yr old commercial vehicles*, The Hindu, June 24, 2016.

CONCLUSION

The above figures reveal that there is something lacking in these laws and guidelines which lead to such a situation. The notification only provides guidelines for utilization, but there is absence of any penalty or punishment on the industries and power plant in case of non utilization. In such a situation, the law does not have enough strength to control the situation. As a result, the indigenous tribal and villagers are being forced to give up their land in order to make space for fly ash dams.

Further, according to the notifications on utilization of fly ash, the government along with these power plants must establish their own brick making units which utilize fly ash. Currently, the provisions are only to make fly ash available to third party.

Also, the state government must restrict itself from permitting set up of any more power plants. Chhattisgarh is a power sufficient state. Hence it is not a good step to establish more power plants when the level of pollution is already at worst level possible. Therefore it is not fair to make the environment even worse for the citizens of the state by establishing more power plants because economic development on price of hazard for entire population of state is not a good bargain.