IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.10033, 10460, 11447, 11448 & 11721, 12941, 16410 & 16411, 16413, 16433 & 16434, 19481 & 19482, 19483, 19493 and 19503 of 2011 and connected Miscellaneous Petitions.

Tamil Nadu Fly Ash Bricks and Block's
Manufactures Association,
Having their Head Office at
No.32, Acharappan Street, Broadway,
Chennai-600 001.
Rep. by its Secretary Mr.Thulasi Raman
... Petitioner in W.P.No.10033 of 2011

M/s.Sree Sakthi Enterprises
Sakthi Complex
Kamarajanar Road Attur-636102
Salem District.
... Petitioner in W.P.No.10460 of 2011

M/s.Midas Industries,
Rep.by its Proprietrix,
Mrs.Vijayalakshmi Sai Chander,
No.14/25, Chellammal Street,
Shenoy Nagar, Chennai - 600 030.
... Petitioner in W.P.No.11447 of 2011

M/s.Marvel Brick Co.,
rep. by its Proprietor
Mr.Praveen Sai Chander
No.197/2 Periyapalayam Road
Manjakaranai Village-601 102
Uthukottai Taluk Thiruvallur District.
... Petitioner in W.P.No.11448 of 2011

M/s.Mangadu Kamatchi Amman Concrete Hallow Bricks
Rep. By Its Partner R.Ramraj
2/254 Mount-Poonamallee Main Road
Iyappanthangal Chennai-56.
... Petitioner in W.P.No.11721 of 2011

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Mahi Bricks,
Rep. by one of its Partner,
Mr.C.Siva Shankar,
S.No.32, Thirunilai Road,
Arani Panchayat,
Arani, Ponneri Taluk,
Thiruvallur District.
... Petitioner in W.P.No.12941 of 2011

M/s.Standard Building Industries,
No.8, Alapakkam - Maduravoyal Road,
Alapakkam Village, Chennai - 116.
... Petitioner in W.P.No.16410 & 16411 of 2011

M/s.Kwality Building Products,
No.5, Alapakkam - Maduravoyal Road,
Alapakkam Road, Chennai - 600 116.
... Petitioner in W.P.No.16413 of 2011

M/s.Sridevi Concrete Blocks,
No.227, Ponneri High Road,
Vellivoil Road, Chennai - 103.
... Petitioner in W.P.No.16433 & 16434 of 2011

M/s.Om Shakthi Enterprises,
SF No.14/2, Kayar Village and Post,
Chengalpattu Taluk, Kancheepuram District.
... Petitioner in W.P.No.19481 of 2011

M/s.AA Fly Ash Bricks,
No.11, Rajalakshmi Apartment,
Sowrashtra Nagar, 2nd Street,
Choolaimedu, Chennai - 94.
... Petitioner in W.P.No.19482 of 2011

M/s.Sun Ash & Hollow Brick Works,
2/180, Kalathi Street,
New Gummidipoondi, Thiruvallur - 601 201.
... Petitioner in W.P.No.19483 of 2011

M/s.OM Shakti Industries,
No.1, Alapakkam Main Road,
Porur, Chennai - 116.
... Petitioner in W.P.No.19493 of 2011

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M/s.Sri Balaji Industry,
No.387/6 - A2, Manamai Village & Post,
Kalpakkam, Kancheepuram - 603 102.
... Petitioner in W.P.No.19503 of 2011

Vs.

Union of India,
Rep., by its Deputy Director,
Ministry of Environment & Forest,
146, Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.
... 1st Respondent in WPs.10033,10460,
11447,11448,11721,12941,16410,16411,
16413,16433,16434,19481,19482,19483,
19493 & 19503 of 2011

The Tamil Nadu Generation &
Distribution Corporation Ltd.,
Rep. by its Chairman,
800, Anna Salai, Chennai-600 002.
... 2nd Respondent in WPs.10033,11447,
11448,11721,12941,16413 & 19503 of 2011

Ennore Thermal Power Station,
(Unit of Tamil Nadu Generation &
Distribution Corporation Ltd.,
Rep., by its Chief Engineer, Ennore,
Chennai-600 120.
... 3rd Respondent in WPs.10033,11447,
11448,11721,12941 of 2011

Thoothukudi Thermal Power Station,
(Unit of Tamil Nadu Generation &
Distribution Corporation Ltd.,)
Rep. By its Chief Engineer,
Thoothukudi-4.
... 4th Respondent in WP.10033 of 2011

North Chennai Thermal Power Station,
(Unit of Tamil Nadu Generation &
Distribution Corporation Ltd.,)
Rep. By its Chief Engineer,
Chennai-600 120.
... 5th Respondent in WPs.10033,10460 of 2011

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Mettur Thermal Power Station,
(Unit of Tamil Nadu Generation &
Distribution Corporation Ltd.,)
Rep. By its Chief Engineer,
Mettur Dam-6.
... 6th Respondent in WP.10033 of 2011

The State of TamilNadu,
Rep.by its Chief Secretary,
New Secretariat,
Wallajah Road, Chennai - 2
... 2nd Respondent in WPs.10460,16410 of 2011

The TamilNadu Generation and
Distribution Corporation Ltd.,
Rep.by its Chief Engineer(Civil),
8th Floor, NPKKR Maligai,
144, Annasalai, Chennai - 2.
... 3rd Respondent in WPs.10460,16410,
16411,16433,16434,19481,19482,
19483,19493 of 2011

TamilNadu Electricity Board,
Rep.by its Chairman,
144, Annasalai,
Chennai - 2.
... 4th Respondent in WPs.10460,16410,
16411,16413,16433,16434,19481,19482,
19483,19493 & 19503 of 2011

The Chief Engineer,
North Chennai Thermal Power Station,
Chennai - 600102.
... 5th Respondent in Wps.10460,
19481,19482 of 2011

The Superintending Engineer,
North Chennai Thermal Power Station,
Chennai - 102.
... 5th Respondent in WPs.10410,16434 of 2011

The State of TamilNadu,
Rep.by its Secretary,
Energy Department, Secretariat,
Fort St. George, Chennai 600009.
... 2nd Respondent in WPs.16411,16413,
16433,16434,19481,19482,19483,
19493 & 19503 of 2011

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The Superintending Engineer,
Ennore Thermal Power Station,
Chennai - 120.

... 5th Respondent in WPs.16411,16413,
16433 of 2011

The Chief Engineer,
Ennore Thermal Power Station,
Chennai - 57.

... 5th Respondent in WPs.19483,19493
& 19503 of 2011

Petitions filed under Article 226 of The Constitution of India praying to issue a

(i) Writ of Mandamus directing the respondents 2 to 6 to implement the Office Memorandum dated 18.3.2011, issued by the first respondent and consequently forbearing from collecting any service charge from the member of the petitioner-Association in respect of the Fly Ash allotted to the said Members. (In WP.No.10033 of 2011)

(ii) Writ of Certiorarified Mandamus Calling for the records of the 3rd Respondent in the notification dated 01.03.2011 bearing reference TANGEDCO proceedings No.29 dated 01.03.2011 and the consequent communication of the 5th Respondent in Lr.No. CE/NCTPS/SE/M1/EE/AHP/FAM/D 42/11 dated 01.03.2011 issued by the 5th Respondent and quash the same as arbitrary and illegal and consequently direct the respondents 3rd and 5th to collect only the actual service charges incurred by the Respondent at a maximum of Rs.250/- per metric tonne in terms of the joint representation of the cement manufactures dated 28.07.2010. (In WP.No.10460 of 2011)

(iii) Certiorarified Mandamus Calling for the records of the 2nd respondent relating to the Letters in L.R.No.CE/C/ HQ/EE3/SE/CD/EE/FAM/SDM/F.NCTPS-free/D.302/11 dt.1.4.2011 and L.R.No.CE/ C/ HQ/EE3/SE/ CD/EE/FAM/ SDM/F.NCTPS-free/D.363/11 dt.11.3.2011 and L.R.No.CE/C/ HQ/EE3/ SE/ CD/EE/FAM/ SDM/F.NCTPS-free/D.301/11 dt.1.4.2011 respectively of the 2nd respondent and quash the same and directing the respondents to supply Fly Ash Free of charges to the petitioner in terms of the Notification SO No.763 (E) Government of India, Ministry of Environment & Forest as amended by Amendment Notification SO

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No.979 (E) dt.27.8.2003 and Amendment Notification SO No.2804 (E) dt.3.11.2009, Govt. of India Ministry of Environment & Forest and the Office Memorandum dt.18.3.2011 issued by the 1st respondent. (In WP.Nos.11447 & 11448 of 2011)

(iv) Mandamus directing the Respondents 2 & 3 herein to implement the Office Memorandum dated 18.03.2011 issued by the First Respondent and order of the Division Bench dated 16.07.2010 in WA.No.1361 of 2010 and consequently forbear from collecting any service charge from the Petitioner in respect of the supply of Fly Ash to the Petitioner. (In WP.Nos.11721 & 12941 of 2011)

(V) Certiorarified Mandamus Calling for the records of the 3rd Respondent in Lr.No. CE/C/HQ/EE3/ SE/CD/EE/FAM/ SDM/F.CTPS-Free/SCC/D.440/11, D.470/11, D.455/11, D.471/11, D.417/11, D.437/11, D.448/11 dated 30.04.2011 and quash the same as arbitrary and illegal in so far as it seeks to levy charges for collection of fly ash thereby

(ii) directing the 3rd Respondent permitting the petitioner to collect the fly ash alloted to it free of charge and consequently direct the 3rd Respondent to refund all charges collected from the petitioner from 3.11.2009 being the date of the Ministry of Environment and Forests Notification S.O 2804 (E) when fly ash was mandated to be supplied free of cost to priority industries such as the petitioner. (In WP.Nos.16410, 16411, 16413, 16433, 16434, 19481, 19482, 19483 & 19503 of 2011 respectively)

For Petitioner in W.P.No.10033,11447, 11448 & 11721 and 12941 of 2011 : Mr.Rathina Asohan

For Petitioner in W.P.No.10460/2011 : Mr.A.M.Packianathan Easter

For Petitioner in W.P.Nos.16410 & 16411, 16413, 16433 & 16434, 19481 & 19482 19483, 19493 and 19503 of 2011 : Mr.Rahul Balaji

For 1st respondent in all WPs. : No appearance for R1

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For respondents 2 to 6 in W.P.No.10033/2011, for R3 to R5 in W.P.10460, 16410 & 16411, 16413, 16433 & 16434, 19481 & 19482 and 19483, 19493 & 19503/2011, for R2 to R4 in W.P.11447 & 11448/2011 & R2 & R3 in W.P.11721 and 12941 of 2011 : Mr.Rameshwar

For 2nd respondent in W.P.10460, 16410 & & 16411, 16413, 16433 & 16434, 19481 & 19482 and 19483, 19493 and 19503 of 2011 : Mr.R.Govindasamy, Addl. Govt. Pleader

W.Ps.11447, 11448, 12941, 16413, 16433, 16434, 19481, 19482, 19483, 19493 & 19503 of 2011 : No Appearance for R1

COMMON ORDER

When the matters are taken up for hearing, the learned counsel appearing on either side submitted that the issue involved in these writ petitions is covered by the decision rendered by a Division Bench of this Court in TAMIL NADU FLY ASH BRICKS AND BLOCK'S MANUFACTURERS ASSOCIATION AND OTHERS V. M/S TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD., ((2014) 5 Law Weekly 492), which has been taken note of in a batch of writ petitions in W.P.Nos.5898 of 2008 etc., batch dated 22.01.2015 by the learned single Judge of this Court. The order dated 22.01.2015 referred supra is extracted hereunder.

> "Since the relief sought for in all these writ petitions are more or less identical and common grounds were raised by all the learned counsels appearing for the petitioners and the prayer made in the writ petitions having been resisted by the learned counsel appearing for the respondents, advancing common arguments, the writ petitions were heard together and are disposed of by this common order.
>
> 2.The learned counsels appearing for the parties submits that in similar circumstances, the Hon'ble Division Bench of this Court in the case

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TAMIL NADU FLY ASH BRICKS NAD BLOCK'S MANUFACTURERS ASSOCIATION, CHENNAI v. TAMIL NADU GENERARATION AND DISTRIBUTION CORPORATION LTD., [(2014) 6 MLJ 275], allowed the Writ Appeals, filed by the Writ Petitioners. For better appreciation, the relevant portions of the order passed by the Hon'ble Division Bench is extracted below:

> 49. It is not in dispute that the fly ash emerges as the by-product during the course of generating power through coal or lignite by the Thermal Power Plants. It is also not in dispute that such by-product emerging out of such power generation, if let loose without protection would cause pollution to the atmosphere, resulting assaults on human beings, other living creatures, plants and property. Therefore, it is the bounden duty of such Thermal Plants to have safeguard measures, so that such polluting material namely, fly ash is not let loose in the atmosphere and on the other hand, it is collected, dumped and removed in order to prevent pollution to the environment. When that being the mandatory obligation on the part of the power generating thermal plants through coal or lignite, they cannot be permitted to say that for doing the job of such collection and accumulation of fly ash, the huge expenditure met out by the TANGEDCO, has to be paid by the Brick Manufacturers. It is not that the said Brick Manufacturers volunteered themselves and wanted to purchase fly ash from the Thermal Power Plants on their own. On the other hand by virtue of the various notifications issued by UOI commencing from 14th, September, 1999, such Brick Manufacturers are compelled to take the fly ash and utilise the same in their brick manufacturing process to preserve the top soil. At this juncture, it is useful to refer paragraph 1 of sub-clause (1) of Notification, dated 14th, September, 1999, which reads as follows:-

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(1) No person shall within a radius of fifty kilometers from coal or lignite based thermal power plants, manufacture clay bricks or tiles or blocks for use in construction activities without mixing at least 25 per cent of ash (fly ash, bottom ash or pond ash) with soil on weight to weight basis.

50. Thus, it is manifestly clear that by virtue of such mandatory requirement, the Brick Manufacturers are compelled to take the fly ash from the Thermal Power Plants and they are removing the fly ash by transporting at their cost from the stock yard. As already discussed supra, these Notifications were issued to achieve the twin object, namely to prevent the Pollution as well as the exploration of the Top soil. When that being the case, the TANGEDCO cannot be justified in contending that the Brick Manufacturers have to meet out the service charges for providing the fly ash. At this juncture, it is also relevant to note that the remaining 80% of the fly ash is being sold to various other cement manufacturing companies and it is stated that such companies have also taken care of the establishment of plant and machineries for collecting the fly ash within the Thermal Power Stations.

51. A perusal of the relevant provisions under the Environment (Protection) Act 1986, would show that the first respondent/Union of India is empowered to issue the impugned proceedings and the TANGEDCO is bound by such directions. Section 3 of the said Act empowers the Central Government to take measures to protect and improve environment. Section 5 deals with Power of the Central Government to issue such directions including the power to direct closure, prohibition or regulation or any industry, operation or process.

Section 24 of the said Act deals with effect of other laws and to contemplate that the provisions of the Environment (Protection) Act, 1986, and the Rules or orders made therein shall have effect notwithstanding anything

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inconsistent therewith contained in any enactment other than this Act. Thus, the overriding effect is clearly stated without any iota of doubt.

52. Considering all the above stated provisions of law and the scope of the same, we are of the considered view that the TANGEDCO which is an industry manufacturing power through thermal stations is bound to follow the directions issued by the Union of India which has statutory force and the competent authority having prohibited the collection of any charge for the supply of fly ash to brick manufacturers, the TANGEDCO is not entitled to collect the service charge from the Brick Manufacturers.

53. We are also not in agreement with the contention of the TANGEDCO that such expenditure, if not collected by way of service charge from the Brick Manufacturers, will have to be passed on to the common man being the consumer of electricity. Definitely the TANGEDCO cannot pass on such expenditure on the consumer because it is not the expenses being met out for generating the thermal power, but on the other hand, it is the incidental expenses being met out in collecting the by-product viz., fly ash in order to prevent the atmosphere pollution. Undoubtedly such expenditure has to be met out only by the TANGEDCO as a mandatory measure in order to comply with the requirement of the various provisions under the Environment (Protection) Act, 1986 while producing electricity. We don't think that the TANGEDCO can pass on all the expenses and expenditure being met out by them to the consumer while dealing with the collection of by product viz. fly ash, which has got nothing to do with the consumer.

54. Considering all the above facts and circumstances of the case and the scope of the two enactments discussed above and also considering the earlier orders passed by the Division Bench of this Court out of which one

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order was confirmed by the Hon'ble Supreme Court and another order has become final and not challenged, we are of the view that the order of the learned Single Judge in allowing the writ petition cannot be sustained as the same has the effect of giving a contra findings to those earlier decisions of the Division Bench.

55. In fine, all the Writ Appeals are allowed and the order of the learned Single Judge is hereby set aside. Consequently, the proceedings No.9-8/2005-HSMD, dated 18.03.2011, impugned in W.P.No.12295 of 2011 issued by the Union of India, Ministry of Environment and Forest, is upheld. No costs. Consequently, connected miscellaneous petitions are closed.

5.The learned counsel appearing on either side agree that the issue involved in these batch of cases are squarely covered in favour of the petitioners by the decision of the Hon'ble Division Bench, referred supra.

6.Following the decision of the Hon'ble Division Bench, referred supra, the Writ Petitions are allowed on the same lines. No costs. Consequently, connected Miscellaneous Petitions are closed."

2. Accordingly, all these writ petitions are allowed on the same lines. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raa

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To

1. The Deputy Director,Union of India,
   Ministry of Environment & Forest,
   146, Paryavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi.

2. The Chairman, Tamil Nadu Generation &
   Distribution Corporation Ltd.,
   800, Anna Salai, Chennai-600 002.

3. The Chief Engineer, Ennore Thermal Power Station,
   (Unit of Tamil Nadu Generation &
   Distribution Corporation Ltd., Ennore,
   Chennai-600 120.

4. The Chief Engineer,Thoothukudi Thermal Power Station,
   (Unit of Tamil Nadu Generation &
   Distribution Corporation Ltd.,)Thoothukudi-4.

5. The Chief Engineer, North Chennai Thermal Power Station,
   (Unit of Tamil Nadu Generation &
   Distribution Corporation Ltd.,)
   Chennai-600 120.

6. The Chief Engineer, Mettur Thermal Power Station,
   (Unit of Tamil Nadu Generation &
   Distribution Corporation Ltd.,)
   Mettur Dam-6.

7. The Chief Secretary & Government of TamilNadu,
   New Secretariat,
   Wallajah Road, Chennai - 2

8. The Chief Engineer(Civil),
   The TamilNadu Generation and
   Distribution Corporation Ltd.,
   8th Floor, NPKKR Maligai,
   144, Annasalai, Chennai - 2.

9. The Chairman,
   TamilNadu Electricity Board,
   144, Annasalai,
   Chennai - 2.

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10.The Chief Engineer,
North Chennai Thermal Power Station,
Chennai - 600102.

11.The Superintending Engineer,
North Chennai Thermal Power Station,
Chennai - 102.

12.The Secretary to Government of TamilNadu,
Energy Department, Secretariat,
Fort St. George, Chennai 600009.

13.The Superintending Engineer,
Ennore Thermal Power Station,
Chennai - 120.

14.The Chief Engineer,
Ennore Thermal Power Station,
Chennai - 57.

+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.49398
+1cc to M/s.T.V.Krishnamachari, Advocate, S.R.No.49165
+1cc to Mr.B.Ramaratnam, Advocate, S.R.No.49189
+10cc's to M/s.Satish Parasaram, Advocate, S.R.No.49440 to 49449
+1cc to the Government Pleader, S.R.No.48270

W.P.No.10033 of 2011 etc., batch

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