

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.11676, 11697, 12839 to 12842, 13993, 13286, 13763, 14669, 13935, 15801 to 15804, 16630 to 16637, 17045, 17873, 17874, 17924, 18181, 18187, 19743, 20545, 29554 of 2011; 30983, 30984 of 2012; 207 to 211, 2000 of 2013; 4580 to 4584, 4841 & 4842 of 2013 and connected M.Ps

W.P.No.11676 of 2011

M/S.NEW FLY ASH BRICKS
MANUFACTURERS ASSOCIATION,
REP. BY ITS PRESIDENT,
MR.K.SOORYA,
1/01, SOORYA CAMPUS,
ALAGAPURAM MAIN ROAD,
SWARNAPURI,
SALEM-4.

...PETITIONER IN WP.NO.11676/2011.

SOUTHERN DISTRICT FLY ASH BRICKS
MANUFACTURES ASSOCIATION,
REP.BY ITS PRESIDENT N.RAJAMONY

... PETITIONER IN WP:11697/2011

M/S. TAMILSELVI,
PROPRIETOR,
P.S.VP. FLY ASH BRICKS & HOLLOW BRICKS
TUTICORIN

... PETITIONER IN WP:12839/2011

M/S. GANGA BRICKS
REP.BY ITS PROPRIETOR
V.ANBURAJ

... PETITIONER IN WP:12840/2011

M/S. S.R.BRICKS
REP.BY ITS PROPRIETOR
S.ALWINJEBASTIN

... PETITIONER IN WP:12841/2011

M/S.GAYATHRI BRICKS
REP.BY ITS PROPRIETOR
S.GANESAN

... PETITIONER IN WP:12842/2011

M/S. JANATHA BRICKS
REP.BY ITS PROPRIETOR
P.C.SUDHA ... PETITIONER IN WP:13993/2011

T.T.P.S.SAMBAL SENGAL
URPATHIYAZHARGAL NALA SANGAM
REP. BY ITS PRESIDENT
N.KANDASAMY ... PETITIONER IN WP:13286/2011

M/S.ULTRALIFE BLOCKS PRIVATE LIMITED,
REP.BY ITS DIRECTOR S.LATHA,
D/O. K.SHANMUGASUNDARAM ... PETITIONER IN WP:13763/2011

M/S. R.R.BRICKS
PROX R.VASANTHI ... PETITIONER IN WP:14669/2011

EVERGREEN BUILDING PRODUCTS(PVT) LIMITED
REP.BY ITS MANAGING DIRECTOR
R.J. VEERARAGAVAN ... PETITIONER IN WP:13935/2011

M/S. METTUR HI-TECTH ASH BRICKS
PROPRIETO: MR.A.JAMBUJOTHI... PETITIONER IN WP:15801/2011

M/S. LAKSHMI FLY ASH WORKS
PROX: MRS.K.MAHESHWARI ... PETITIONER IN WP:15802/2011

M/S. RAJESH INDUSTRIES
PROP: MR.V.S.RAJAVENKATESWARAN ... PETITIONER IN WP:15803/2011

M/S.V.V.R. BRICKS
PROP: MR.V.S.VIJAYAKUMAR ... PETITIONER IN WP:15804/2011

M/S.OCEAN BRICKS & BLOCKS
REP.BY ITS PROPRIETOR
R. JAYALAKSHMI ... PETITIONER IN WP:16630/2011

M/S.K.P.S. INDUSTRIES
REP.BY ITS PROPRIETOR
E.P.PARAMASIVAM ... PETITIONER IN WP:16631/2011

M/S. OMSAKTHI ENVIRO TECHS
REP.BY ITS PROPRIETOR
B. KAMALBARATHY ... PETITIONER IN WP:16632/2011

M/S. SRISAI FLY ASH PRODUCTS
REP.BY ITS PROPRIETOR
D.GOPALAKRISHNAN ... PETITIONER IN WP:16633/2011

M/S.VIGNESHWARAA ENTERPRISES
REP.BY ITS PROPRIETOR
V.VIJAYAKUMAR ... PETITIONER IN WP:16634/2011

M/S. A.P.R. FLY ASH BRICKS
REP.BY ITS PROPRIETOR
P.SENTHILKUMAR ... PETITIONER IN WP:16635/2011

M/S. SUDHA BRICKS
REP.BY ITS PARTNER G.HEMAVATHY
... PETITIONER IN WP:16636/2011

M/S. ANDAVAR INDUSTRIES
REP.BY ITS PROPRIETOR
A.VIJAYARABINSON ... PETITIONER IN WP:16637/2011

SMT. SARADHA GOPAL
MANAGING PARTNER
M/S. URVI INTERMEDIATES ... PETITIONER IN WP:17045/2011

M/S. AYYANAR FLY ASH BRICK WORKS
REP.BY ITS PROPRIETOR
P.MUTHU KUMAR ... PETITIONER IN WP:17873/2011

M/S. SRIMARIE HI POWER BRICS
S.NO:132/4,D.NO:2/228
REP.BY ITS PROPRIETOR
M.MARIMUTHU ... PETITIONER IN WP:17874/2011

M/S.RAJAKALA BRICKS
REP.BY ITS PROPRIETOR
T.ARIVUMARI ... PETITIONER IN WP:17924/2011

R.PRITHIVIRAJAN
PROPRIETOR
PRITHIVI HOLLOW BRICKS ... PETITIONER IN WP:18181/2011

M/S. J.V.P.DHANAM BRICKS
REP.BY ITS PROPRIETOR
J.DHANAPPAUL ... PETITIONER IN WP:18187/2011

M/S. BHARAT CONSTRUCTION
REP.BY ITS PARTNER
V.S.JAYARAMA NAIDU ... PETITIONER IN WP:19743/2011

M/S. KARUNYA HI-POWER BRICKS
REP.BY ITS PROPRIETOR
MS.SARAH RAJA KUMARI ... PETITIONER IN WP:20545/2011

M/S. NITHYA MARUDHA BRICKS
REP.BY ITS PROPRIETOR
N.VASANTHA ... PETITIONER IN WP:29554/2011

M/S. SRI BALAJI FLY ASH BRICKS
REP.BY ITS PROPRIETOR
P. NATARAJAN ... PETITIONER IN WP:30983/2012

M/S. ULTIMATE & CO
REP.BY ITS PARTNER
N.KATHIRVEL ... PETITIONER IN WP:30984/2012

M/S. GURU BRICKS
REP.BY ITS PROPRIETOR
G.SUBRAMANIAM ... PETITIONER IN WP:207/2013

M/S. ASN BRICKS & BLOCKS
REP.BY ITS PROPRIETOR
S.KRISHNAN ... PETITIONER IN WP:208/2013

M/S. ROHINI FLY ASH BRICK WORKS
REP.BY ITS MANAGING PARTNER
P.RAVICHANDRAN ... PETITIONER IN WP:209/2013

M/S. SAKTHI FLY ASH BRICKS
REP.BY ITS PROPRIETOR
R.THENMOZHI ... PETITIONER IN WP:210/2013

M/S. NANDHINI FLY ASH BRICKS
REP.BY ITS PARTNER
R.RAJKUMAR ... PETITIONER IN WP:211/2013

R.THANGARAJ
PROPRIETOR- J.R.BRICKS ... PETITIONER IN WP:2000/2013

M/S. SUBAM ASH BRICKS
REP.BY ITS PROPRIETOR
N.SHANMUGAM ... PETITIONER IN WP:4580/2013

M/S. SRI SAKTHI RAM FLY ASH BRICK WORKS
REP.BY ITS PROPRIETOR
P.SAKTHIVELAN ... PETITIONER IN WP:4581/2013

M/S. SRI VEDA BRICKING
REP.BY ITS PROPRIETOR
D.R.VEDA PRIYA ... PETITIONER IN WP:4582/2013

M/S. LAKSHMI FAL-G BRICKS
REP.BY ITS PROPRIETOR
K.BUDDHISIGAMANI ... PETITIONER IN WP:4583/2013

M/S. S.P.M. FLY ASH BRICKS INDUSTRIES
REP.BY ITS PROPRIETOR
S.PANNERSELVAM ... PETITIONER IN WP:4584/2013

M/S. THIRUMURUGAN BRICKS
REP.BY ITS PROPRIETOR
VIDHYA MADHAN MOHAN ... PETITIONER IN WP:4841/2013

M/S. ALPHA FOUNDATIONS (P) LIMITED
REP.BY ITS PROPRIETOR
S. SARAVANAPERUMAL ... PETITIONER IN WP:4842/2013

Versus

1.THE GOVERNMENT OF INDIA
REP. BY ITS DEPUTY DIRECTOR,
MINISTRY OF ENVIRONMENT & FOREST,
146, PARYAVARAN BHAWN,
C.G.O., COMPLEX,
LODHI ROAD,
NEW DELHI.

2.THE CHAIRMAN,
TAMILNADU ELECTRICITY BOARD,
144, ANNA SALAI,
CHENNAI-600 002.

3. THE CHIEF ENGINEER,
CIVIL HEAD QUARTERS,
TAMILNADU ELECTRICITY BOARD,
144, ANNA SALAI,
CHENNAI-600 002.

4. THE CHIEF ENGINEER,
METTUR THERMAL POWER STATION,
METTUR DAM-6,
SALEM DISTRICT.

.. RESPONDENTS in WP.11676/2011.

THE STATE OF TAMILNADU
REP.BY ITS SECRETARY ENVIRONMENT AND FOREST
DEPARTMENT FORT ST. GEORGE CH-9

THE CHIEF ENGINEER/CIVIL/HEAD
QUARTERS THE TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD.
5TH FLOOREASTERN WING
NPKRR MAALIGAI
NO.144 ANNA SALAI CH-2

THE TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD.
REP BY ITS CHAIRMAN CUM
MANAGING DIRECTOR
NO.144 ANNA
SALAI CH-2

TUTICORIN THERMAL POWER STATION
REP.BY ITS CHIEF ENGINEER
TUTICORIN ... RESPONDENTS IN WP:11697/2011

UNION OF INDIA
REP.BY ITS DEPUTY DIRECTOR
MINISTRY OF ENVIRONMENT AND FOREST
146, PARYAVARAN BHAVAN, CGO COMPLEX
LODHI ROAD, NEW DELHI

THE TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LIMITED
REP.BY ITS CHAIRMAN
144, ANNA SALAI, CHENNAI-600 002

THOOTHUKUDI THERMAL POWER STATION
(UNIT OF TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LIMITED)
REP.BY ITS CHIEF ENGINEER
ENOORE, CHENNAI 600 120

... RESPONDENTS IN WP:12839 TO 12842/2011
AND WP:13993/2011

THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY
ENVIRONMENT AND FOREST DEPARTMENT
FORT ST. GEORGE CHENNAI-9.

THE TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD
REP. BY ITS CHAIRMAN CUM MANAGING DIRECTOR
NO.144 ANNA SALAI
CHENNAI-2.

THE CHIEF ENGINEER/ CIVIL/HEAD QUARTERS
THE TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD
5TH FLR EASTERN WING
NPKRR MALIGAI
NO.144
ANNA SALAI CHENNAI-2.

TUTICORIN THERMAL POWER STATION
REP. BY ITS CHIEF ENGINEER
TUTICORIN. ... RESPONDENTS IN WP:13286/2011;
17924/2011; 20545/2011.

1 UNION OF INDIA
REP BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT AND FOREST 146 PARYAVARAN
BHAWAN CGO COMPLEX LODHI ROAD NEW DELHI

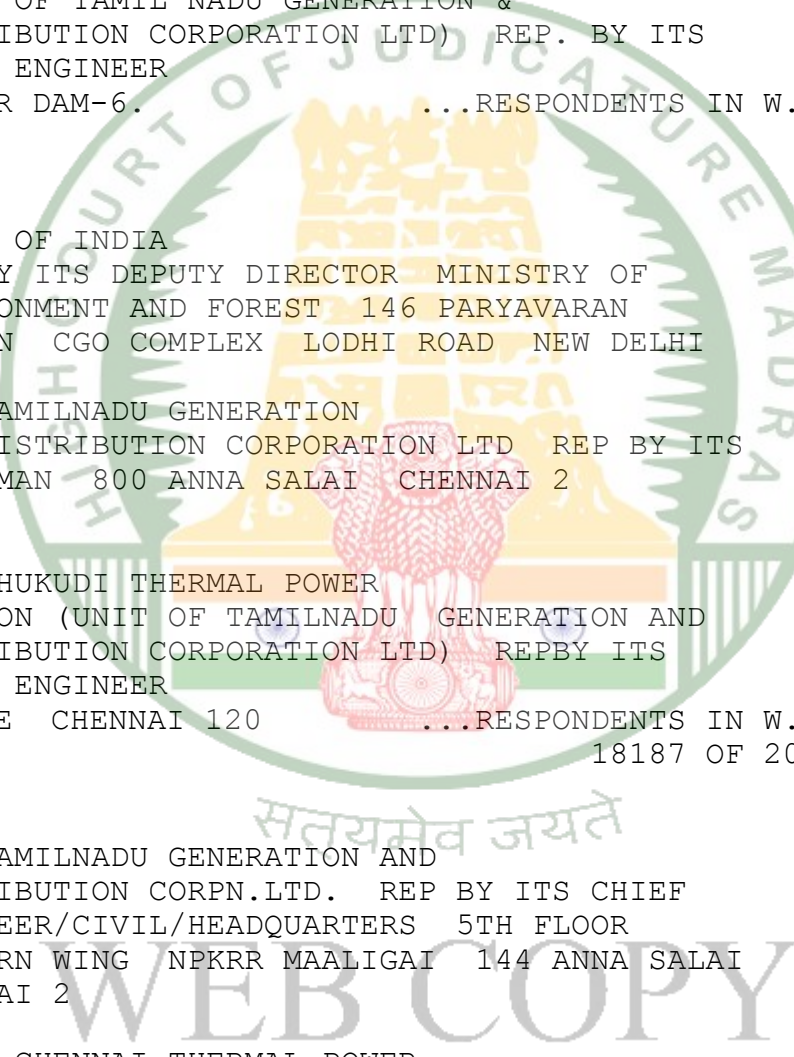
2 THE TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD REP BY ITS
CHAIRMAN 800 ANNA SALAI CHENNAI 2

3 ENNORE THERMAL POWER STATION
(UNIT OF TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD.) REP BY ITS
CHIEF ENGINEER
ENNORE CHENNAI 120 ...RESPONDENTS IN W.P.NO.13763 OF 2011

1 UNION OF INDIA
REP BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT AND FORESTS NO.146 PARYAWARAN
BHAVAN LODHI ROAD NEW DELHI 110 003

- 2 THE CHAIRMAN
TAMILNADU GENERATION AND DISTRIBUTION
CORPORATION LTD 10TH FLOOR NPKKR MALIGAI
NO.144 ANNA SALAI CHENNAI 2
- 3 THE CHIEF ENGINEER/CIVIL/
HEADQUARTERS TAMILNADU GENERATION AND
DISTRIBUTION CORPN. LTD 5TH FLOOR NPKKR
MALIGAI NO.144 ANNA SALAI CHENNAI 2
- 4 THE CHIEF ENGINEER
METTUR THERMAL POWER STATION
METTUR DAM 636 406 ...RESPONDENTS IN W.P.NO.14669 OF 2011
& 29554 of 2011
- 1 UNION OF INDIA
REP.BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT & FOREST 146 PARYAVARAN BHAWAN
CGO COMPLEX LODHI RD NEW DELHI.
- 2 THE TAMIL NADU GENERATION &
DISTRIBUTION CORPORATION LTD. REP.BY ITS
CHAIRMAN 800 ANNA SALAI CHENNAI-2.
- 3 NORTH CHENNAI THERMAL POWER
STATION (UNIT OF TAMIL NADU GENERATION &
DISTRIBUTION CORPORATION LTD) REP.BY ITS
CHIEF ENGINEER
CHENNAI-120. ...RESPONDENTS IN W.P.NO.13935 OF 2011
- 1 UNION OF INDIA REP BY ITS
DEPUTY DIRECTOR MINISTRY OF ENVIRONMENT AND
FORESTS NO.146 PARYAWARAN BHAVAN LODHI
ROAD NEW DELHI 110 003
- 2 THE CHAIRMAN
TAMILNADU GENERATION AND DISTRIBUTION
CORPORATION LTD 10TH FLOOR NPKKR MALIGAI
NO.144 ANNA SALAI CHENNAI 2
- 3 THE CHIEF ENGINEER/CIVIL/
HEADQUARTERS TAMILNADU GENERATION AND
DISTRIBUTION CORPN. LTD 5TH FLOOR NPKKR
MALIGAI NO.144 ANNA SALAI CHENNAI 2

- 4 THE CHIEF ENGINEER
METTUR THERMAL POWER STATION
METTUR DAM 636 406 ...RESPONDENTS IN W.P.NO.15801 OF 2011
TO 15804 OF 2011
- 1 UNION OF INDIA
REP. BY DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT & FORESTS 146 PARYAWARAN
BHAVAN LODHI ROAD NEW DELHI-110 003.
- 2 M/S.TAMIL NADU GENERATION &
DISTRIBUTION CORPORATION LIMITED REP. BY
ITS CHIEF ENGINEER/ CIVIL/ HEADQUARTERS 5TH
FLR EASTERN WING NPKRR MAALIGAI 144 ANNA
SALAI CH-2.
- 3 TAMIL NADU ELECTRICITY BOARD
REP. BY ITS CHAIRMAN NO.144 ANNA SALAI
CHENNAI-2.
- 4 THE CHIEF ENGINEER
NORTH CHENNAI THERMAL POWER STATION
CHENNAI- 120. ...RESPONDENTS IN W.P.NO.16630 OF 2011
& 18181 OF 2011
- 1 UNION OF INDIA
REP. BY DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT & FORESTS 146 PARYAWARAN
BHAVAN LODHI ROAD NEW DELHI-110 003.
- 2 M/S.TAMIL NADU GENERATION &
DISTRIBUTION CORPORATION LIMITED REP. BY
ITS CHIEF ENGINEER/ CIVIL/ HEADQUARTERS 5TH
FLR EASTERN WING NPKRR MAALIGAI 144 ANNA
SALAI CH-2.
- 3 TAMIL NADU ELECTRICITY BOARD
REP. BY ITS CHAIRMAN NO.144 ANNA SALAI
CHENNAI-2.
- 4 THE CHIEF ENGINEER
METTUR THERMAL POWER STATION
METTUR DAM-636 406. ...RESPONDENTS IN W.P.NO.16631 OF 2011
TO 16637 OF 2011, 30983, 30984 OF 2012
4580 OF 2013 & 4541 OF 2013

- 1 UNION OF INDIA
REP. BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT & FOREST 146 PARYAVARAN BHAWAN
CGO COMPLEX LODHI ROAD NEW DELHI.
 - 2 THE TAMIL NADU GENERATION &
DISTRIBUTION CORPORATION LTD REP. BY ITS
CHIEF ENGINEER/ CIVIL/ HEAD QUARTERS 144
ANNA SALAI CHENNAI-2..
 - 3 METTUR THERMAL POWER STATION
(UNIT OF TAMIL NADU GENERATION &
DISTRIBUTION CORPORATION LTD) REP. BY ITS
CHIEF ENGINEER
METTUR DAM-6.RESPONDENTS IN W.P.NO.17045 OF 2011
2000 OF 2013
- 
- 1 UNION OF INDIA
REP BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT AND FOREST 146 PARYAVARAN
BHAVAN CGO COMPLEX LODHI ROAD NEW DELHI
 - 2 THE TAMILNADU GENERATION
AND DISTRIBUTION CORPORATION LTD REP BY ITS
CHAIRMAN 800 ANNA SALAI CHENNAI 2
 - 3 THOOTHUKUDI THERMAL POWER
STATION (UNIT OF TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD) REPBY ITS
CHIEF ENGINEER
ENNORE CHENNAI 120RESPONDENTS IN W.P.NO.17873 OF 2011
18187 OF 2011 & 17874 OF 2011
- 1 THE TAMILNADU GENERATION AND
DISTRIBUTION CORPN.LTD. REP BY ITS CHIEF
ENGINEER/CIVIL/HEADQUARTERS 5TH FLOOR
EASTERN WING NPKRR MAALIGAI 144 ANNA SALAI
CHENNAI 2
 - 2 NORTH CHENNAI THERMAL POWER
STATION (UNIT OF TAMILNADU GENERATION AND
DISTRIBUTION CORPN. LTD.) REP BY ITS CHIEF
ENGINEER CHENNAI 120

- 3 UNION OF INDIA
REP BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT AND FOREST 146 PARYAVARAN
BHAWAN CGO COMPLEX LODHI ROAD
NEW DELHI ...RESPONDENTS IN W.P.NO.19743 OF 2011
- 1 UNION OF INDIA REP. BY ITS
DEPUTY DIRECTOR MINISTRY OF ENVIRONMENT &
FOREST 146 PARYAVARAN BHAWAN CGO COMPLEX
LODHI ROAD NEW DELHI
- 2 THE TAMILNADU GENERATION &
DISTRIBUTION CORPORATION LTD. REP. BY ITS
CHAIRMAN 800 ANNA SALAI CHENNAI-2
- 3 THE TAMILNADU GENERATION &
DISTRIBUTION CORPORATION LTD. REP. BY ITS
CHIEF ENGINEER/CIVIL DESIGNS 3RD FLOOR
EASTERN WING NPKRR MAALIGAI 144 ANNA
SALAI CHENNAI-2
- 4 METTUR THERMAL POWER
STATION (UNIT OF TAMILNADU GENERATION &
DISTRIBUTION CORPORATION LTD.) REP. BY ITS
CHIEF ENGINEER
METTUR DAM-6 ...RESPONDENTS IN W.P.NO.207 TO 211 OF 2013
- 1 UNION OF INDIA
REP BY DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT AND FORESTS 146 PARAYAWARAN
BHAVAN LODHI ROAD NEW DELHI-110 003
- 2 M/S.TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LIMITED REP BY ITS
CHIEF ENGINEER/CIVIL/ HEADQUARTERS 3RD
FLOOR EASTERN WING NPKRR MAALIGAI 144
ANNA SALAI CHENNAI-2
- 3 TAMILNADU ELECTRICITY BOARD
REP BY ITS CHAIRMAN 144 ANNA SALAI CHENNAI-
2
- 4 THE CHIEF ENGINEER
ENNORE THERMAL POWER STATION
ENNORE-57. ...RESPONDENTS IN W.P.NO.4581 TO 4584 OF 2013
AND 4842 OF 2013

PRAYER in W.P.No.11676 of 2011 : Writ petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the respondents 2 to 4 herein to implement the Office Memorandum - File No.9-8/2005 - HSMD dated 18.03.2011 and the notification S.O.No.2804 (E) dated 03.11.2009 issued by the first respondent and consequently forbear them from collecting any service from the members of the petitioner association in respect of Fly Ash allotment to be used for manufacturing the Bricks, Blocks and Tiles etc.,

W.P.No.11697 of 2011

Forbearing the respondent No.2 and 3 from in anyway collecting or demanding any amount on the guise of service charge for supply of fly Ash free of cost to the members of the petitioners Association set out in the annexure herein in conformity with G.O.Ms.No.248 industries (MIB I) Dept. dated 22.09.1997 as amended by G.O.s.No.629 Industries (MIB I) Dept. dated 29.07.1999 and Memorandum issued by the Ministry of Environment and Forests Union of India dated 18.03.2011

W.P.12839 to 12842 of 2011:

Directing the Respondents 2 to 3 herein to implement the Office Memorandum dated 18.3.2011 issued by the First Respondent and consequently forbear from collecting the service charges forthwith

W.P.No.13993 of 2011

Forbearing the respondents from collecting the service charges forthwith as per the O.M. 9-8/2005 HSMD dt 18.3.2011 issued by the 1st respondent and further direct the respondent to return the service charges already collected from the petitioner.

W.P.No.13286, 17924, 20545/2011

Forbearing the respondents No.2 to 4 from in anyway collecting or demanding any amount on the guise of service charge for supply of Fly ash free of cost to the members of the petitioner Association set out in the annexure herein in conformity with G.O.Ms.No.248 Industries (MIBI) Department dt.22.9.1997 as amended by G.O.Ms.No.629 Industries (MIBI) Department dt.29.7.1999 and Memorandum issued by the Ministry of Environment and Forests Union of India dt.18.3.2011

W.P.No.13763, 13935/2011

directing the respondents 2 and 3 herein to implement the Office Memorandum dt 18.3.2011 issued by the 1st respondent and consequently forbear from collecting any service charge from the petitioner in respect of the Fly Ash allotted to the petitioner

W.p.no.14669, 29554/2011

directing the respondents 2 to 4 herein to implement the office memorandum - File No.9-8/2005 - HSMD dt 18.3.2011 and the Notification S.O.No.2804 (E) dt 3.11.2009 issued by the 1st respondent and consequently forbear them from collecting any service charges from the petitioner in respect of fly ash allotment

W.P.No.15801 to 15804 of 2011

Directing the respondents 2 to 4 herein to implement the Office Memorandum - File No.9-8/2005 - HSMD dt 18.3.2011 and the Notification S.O.No.2804 (E) dt 3.11.2009 issued by the 1st respondent and consequently forbear them from collecting any service charges from the petitioner in respect of fly ash allotment

W.P.16630 of 2011

Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/ FAM/SDM/ FMCTPS-Free /SCC/D.351/11 dt.8/4/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent

W.P.16631 of 2011

Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/FAM/SDM/ F.MTPS-Free/ SCC/D.387/11 dt.18/4/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent

W.P.No.16632 of 2011

Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/FAM/ SDM/ F.MTPS-Free /SCC/D.352/11 dt.8/4/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent

W.P.No.16633 of 2011

Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/ FAM/ SDM/ F.MTPS-Free /SCC/D.390/11 dt.18/4/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent

W.P.NO.16634 OF 2011:

To issue a Writ of Certiorarified Mandamus or any other writ, order or direction in the nature of Writ by Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/FAM/ SDM/ F.MTPS-Free /SCC/D.581/11 dt.30/5/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent.

W.P.NO.16635/2011

To issue a Writ of Certiorarified Mandamus or any other writ, order or direction in the nature of Writ by Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/FAM/SDM/F MTPS-Free /SCC/D.388/11 dt.18/4/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service

charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent

W.P.NO.16636 OF 2011

To issue a Writ of Certiorarified Mandamus or any other writ, order or direction in the nature of Writ by Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/FAM/SDM/F MTPS-Free /SCC/D.331/11 dt. 7/4/2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent.

W.P.NO.16637 OF 2011

To issue a Writ of Certiorarified Mandamus or any other writ, order or direction in the nature of Writ by Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/FAM/SDM/F MTPS-Free /SCC/D.582/11 dt. 30.5.2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in File No.9-8/2005 HSMD dt.26/10/2010 issued by the 1st respondent.

W.P.NO.17045 OF 2011

Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/ C/HQ/EE3/ SE/CD/EE/ FAM/SDM/F MTPS-Free/ SCC/D.364/ 11 dated 11.4.2011 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 and 3 and their men from in any way demanding any kind of service charges from the petitioner through the firm M/s.Urvi Intermediates towards free supply of dry fly ash as stipulated in the Office Memorandum in File No.9-8/2005-HSMD dt.26.10.2010 issued by the 1st respondent.

W.P.NO.17873; 17874/2011, 18187 OF 2011:

Writ of Mandamus directing the respondents 2 to 3 herein to implement the Office Memorandum dt 18.3.2011 issued by the 1st respondent in letter and spirit and consequently forbear from collecting the service charges forthwith.

W.P.No.19743 of 2011

calling for the records pertaining to the impugned order dt 30.4.2011 vide Lr. No. CE/ C / HO/EE3/SE/CD/EE/FAM/SDM/F.NCTPS/Free/SCC/D.444/11 issued by the 1st respondent seeking to levy service charges for collection of fly ash by the petitioners/ licencees and quash the same.

W.P.NO.30983; 30984/2012, 4580 OF 2013:

calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr. No.CE/CD/SE/CD/EE2/AEE/F.MTPS/SCC/D.1872/12, D.1880/12, D.1916/12 dated 3.9.2012, 3.10.2012 & 3.10.2012 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the office memorandum in file No.9-8/2005-HSMD dated 26.10.2010 issued by the 1st respondent.

W.P.NO.207 TO 211 OF 2013

calling for the records pertaining to the impugned order passed by the 3rd respondent in Lr.No. CE/ CD/ SE/ CD/ EE2/ AEE/ F.MTPS/ SCC/ D.1839/12 , 1847/12,1840/12, 1867/12, 1892/12 & 1840/12 dated 3.10.2012 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry fly ash as stipulated in the Office Memorandum in File No.9-8/2005-HSMD dated 18.3.2011 issued by the 1st respondent

W.P.NO.2000/2013:

Calling for the entire records relating to the provisional order of allotment in the proceedings in Lr.No.CE/ CD/SE/CD/EE2/AEE/F.MTPS/ SCC/D.1889/12 dated 3.10.2012 from the file of the 2nd respondent quash the same so far as it relates to the levy of

service charges and also forbear the respondents from collecting Service Charge or any other charge for the supply of dry ESP Fly Ash to the petitioner

WP.No.4581 to 4584/2013: Calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr.No.CE/CD/SE/CD/EE2/ AEE-4/F.ETPS-Free/ D.157/13, 159/13, 162/13, 169/13 dated 6.2.2013 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry ash as stipulated in the Office Memorandum in File No. 9-8/ 2005-HSMD dated 26.10.2010 issued by the 1st respondent and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

WP.No.4841 & 4842/2013: calling for the records pertaining to the impugned order passed by the 2nd respondent in Lr. No. CE/CD/SE/CD/EE2/AEE/F.MTPS/SCC/D.1865/12 dt 3.10.2012 Lr.No.CE/CD/SE/CD/EE2/AEE-4/F-ETPS/NEE/D 174/13 dt.6.2.13 and quash the same in so far as it relates to the collection of service charges in relation to the free supply of dry fly ash to the petitioner and consequently forbear the respondents 2 to 4 and their men from in any way demanding any kind of service charges from the petitioner towards free supply of dry ash as stipulated in the office memorandum in File No.9-8/2005-HSMD dt 26.10.2010 issued by the 1st respondent.

For Petitioner in WP.11676/2011 : Mr.N.Manokaran

L.Thilageswaran ...For Petitioner in WP.11697/2011, 13286

S.Anbazhagan ...For Petitioner in WP.12839 to 12842/2011 & 13993/2011

P.Sivamani ...For Petitioner in WP.13763, 13935

S.Giritharan ...For Petitioner in WP.14669/11, 15801 to 15804/11, 29554/11

A.Tamilvanan ...For Petitioner in WP.16630 to 16637/11, 30983, 30984/12

Dr.P.Vasudevan ...For Petitioner in WP.17045/2011

S.Anbazhagan ...For Petitioner in WP.17873, 17874/11

G.Sankaran ...For Petitioner in WP.17924/2011

D.Shivakumaran ...For Petitioner in WP.18181/2011 & 2000/13
S.Sasikumar ...For Petitioner in WP.18187/11
K.G.Vasudevan ...For Petitioner in WP.19743/2011
T.Sundaranathan ...For Petitioner in WP.20545/11
P.P.Shanmugasundaram...For Petitioner in WP.207 to 211/13
S.P.Yuvaraj ...For Petitioner in WP.4580 to 4584/13 and
4841, 4842/13

For Respondents : Mr.K.Mohanamurali
Central Govt. Standing Counsel
(Electricity Board) : Mr.S.K.Rameshwar
[Forest Department] : Mr.N.Inbanathan
Govt. Advocate [State Government]
[Pollution Control Board] : Mrs. Rita Chandrasekar

For Respondents : Mr.K.Mohanamurali
Central Govt. Standing Counsel for R1

COMMON ORDER

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 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:-

(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 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 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.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

kal

To

1. THE DEPUTY DIRECTOR,
MINISTRY OF ENVIRONMENT & FOREST,
146, PARYAVANAR BHAVAN, CGO COMPLES,
LODHI ROAD, NEW DELHI.
2. THE CHAIRMAN,
TAMIL NADU ELECTRICITY BOARD, 144 ANNA SALAI
CHENNAI 2
3. THE CHIEF ENGINEER, CIVIL HEAD QUARTERS,
TAMIL NADU ELECTRICITY BOARD, 144 ANNA SALAI
CHENNAI 2
- 4 THE CHIEF ENGINEER,
METTUR THERMAL POWER STATION METTUR DAM 636 406.

- 5 THE SECRETARY,
ENVIRONMENT AND FOREST DEPARTMENT, FORT ST.GEORGE,
CHENNAI.
- 6 THE CHIEF ENGINEER/CIVIL/HEAD QUARTERS,
THE TAMIL NADU GENERATION AND DISTRIBUTION,
5TH FLOOR, EASTERN WING,
NPKRR MALAIGAI, 144 ANNA SALAI, CHENNAI.
7. THE CHAIRMAN CUM MANAGING DIRECTOR,
THE TAMIL NADU GENERATION AND DISTRIBUTION CORPN. LTD.,
144 ANNA SALAI, CHENNAI.
- 8 THE CHIEF ENGINEER,
TUTICORIN THERMAL POWER STATION, TUTICORIN.
9. THOOTHUKUDI THERMAL POWER STATION,
UNIT OF TAMIL NADU GENERATION AND DISTRIBUTION CORPN. LTD.,
REP. BY ITS CHIEF ENGINEER,
ENNORE, CHENNAI.
- 10 ENNORE THERMAL POWER STATION,
(UNIT OF TAMIL NADU GENERATION AND DISTRIBUTION CORPN.LTD.,
REP. BY ITS CHIEF ENGINEER, ENNORE, CHENNAI.
- 11 NORTH CHENNAI THERMAL POWER STATION,
(UNIT OF TAMIL NADU GENERATION AND DISTRIBUTION CORPN.LTD.,
REP. BY ITS CHIEF ENGINEER, CHENNAI.
- 12 THE CHAIRMAN,
TAMIL NADU GENERATION AND DISTRIBUTION CORPN.LTD.,
800 ANNA SALAI, CHENNAI.
- 13 THE CHIEF ENGINEER,
ENNORE THERMAL POWER STATION, ENNORE.

+1 CC TO MR.K.MOHANAMURALI, ADVOCATE,SR4672
+1 CC TO MR.N.MANOKARAN, ADVOCATE,SR4357
+1 CC TO MR.S.K.RAMESHKUMAR,ADVCOATE (TNEB) SR.4608
+1 CC TO MR.E.VIJAY ANAND, ADVOCATE,SR.4522
+2 CC TO MR.P.P.SHANMUGASUNDARAM, ADVOCATE,SR.4683.

WP.Nos.11676 of 2011 etc. batch

ts[co]
krd, kk, psi, eu, pmk, gp/25.2.15