

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.6590 of 2011
and
M.P.Nos.2,3 and 4 of 2011

Chennai Ashtech Company,
represented by its partner,
Mr.Sakthhivel,
having Office at SF 134/A 1,
Kaniyalampalaya Pirivu,
Police Naicker Thottam,
Kakkakadavu (PO),
Pollachi - 642 120.

... Petitioner

vs.

1.The Tamil Nadu Electricity Board,
represented by its Chairman,
No.144, Anna Salai,
Chennai - 600 002.

2.Chief Engineer/Civil Designs,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

3.Director (Generation), सत्यमेव जयते
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.

4.Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Letter Per (FB) TANGEDCO Proceedings No.29, dated 1.3.2011 and to quash the same as illegal and arbitrary and consequently direct the second

respondent to permit the petitioner to continue to lift fly ash of its allotted quantity in terms of the petitioner to continue to lift fly ash of its allotted quantity in terms of the Memorandum of Understanding dated 3.1.2008 without any increase in charges.

For petitioner : Mr.S.Elambharathi
for M/s.K.J.Rebello

For respondents : Mr. C.Mani Shankar,
Additional Advocate General
assisted by Mr.S.K.Rameshuwar
Standing Counsel for TNEB

ORDER

The present Writ Petition has been filed challenging the order enhancing the service charges payable for dry fly ash by the petitioner at the Thermal Power Stations of the respondent/TANGEDCO from Rs.350/- per MT to Rs.700/- per MT as being wholly arbitrary and illegal.

2. In a batch of connected Writ Petitions, on the same issue, viz., in W.P.Nos.5513, 5514 and 5515 of 2011, this Court, by judgment dated 01.02.2013 disposed of the Writ Petitions modifying and fixing the service charges payable by the petitioner/Cement Companies (PDFACS) at Rs.536 per MT (rounded off to Rs.540/- per MT). The relevant extract of the said Judgment is as follows:-

"12. In view of the discrepancy pointed on various heads, particularly, Serial No.1 (a), (b), the respondents were directed to rework the figure and thereafter a revised working sheet showing the calculation of the service charges in respect of fly ash supplied to cement companies has been worked out as follows:-

"Working sheet for calculation of service charges for Cement Companies (PDFACS)

1) Maintenance of ESP electrical equipments control panels and establishment charges of E.M. Sub-division = Rs.21/ton

2) Maintenance charges of ESP mechanical equipments and establishment charges of ESP sub-division = Rs.69/ton

3) Establishment charges of AHP division regarding fly ash Management & security system = Rs.72/ton

4) Current consumption charges for fly ash evacuation system = Rs.50/ton

5) Current consumption charges for ESP system = Rs.96/ton

6) Cost towards investment for dry fly Ash collection system = Rs.76/ton

7) Cost towards investment for Ash silo = Rs.18/ton

8) Maintenance charges for road, lighting, water charges etc., = Rs.108/ton

9) Maintenance charges for fly ash evacuation system, pipe lines & silo etc. = Rs.98/ton Total Rs.608/ton.

A copy of the above working sheet was served on all the petitioners. Insofar as Serial No.3 with regard to fly ash management and security system, it is objected stating that it is a part and parcel of the thermal power plant. The fly ash is generated only a by-product of the main function of generation power and the charges on that head is inappropriate as the cost for management and security system is for the generating plant only. The respondent fairly states that the court may suitably modify or reduce the amount if one or other head appears to be inappropriate or excessive. It is to be noted that revision of cost is driven by relevant

factors from time to time and therefore, the revision is justified. However, the respondents cannot enhance the service charges arbitrarily without proper basis.

13. Taking note of the above factor, the revised working sheet appears to be correct except the charges on the head in Serial No.3. Petitioners are agreeable to pay the service charges, if that amount is reduced on this head. Accordingly, the sum of Rs.72/- claimed towards the management and security system is deleted for the purpose of determining the service charges for supply of fly ash and the respondents will be entitled to collect service charges in a sum of Rs.536/- (Rs.608 - 72/- = Rs.536/-) with effect from 1.3.2011 (i.e.) the date of proceedings under challenge. Petitioners are agreeable for the determination of the service charges as above. Accordingly, the service charges insofar as petitioners stand modified at Rs.536/- rounded to Rs.540/- per Metric Tonne as above.

14. The Writ Petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed."

3. However, with respect to the working sheet furnished by TANGEDCO with regard to the breakup of service charge as extracted in the above judgment dated 1.2.2013, the heads at Serial No.4 (i.e. Current Consumption Charges for fly ash evacuation system) and Serial No.6 (i.e. Cost towards investment for dry fly ash collection system) were admittedly already being borne separately by the petitioner/Cement companies and hence, the inclusion of the same in the computation of service charges was untenable. Therefore, the writ petitioners therein filed review applications bearing Review Application Nos.55,56 and 59 of 2013.

4. By order dated 12.04.2017, this Court passed orders in M.P.Nos.1 to 1 of 2013 in the aforesaid Review Applications, which are as follows:-

"Heard Mr.Rahul Balaji, learned counsel for the review applications. He points out that there is an error in the order dated 1.2.2013 made in W.P.Nos.5513 of 211, 5514 of

2011 and 5515 of 2011 relating to Item No.(4) - Current Consumption Charges for fly ash evacuation system and Item No.(6) Cost towards investment for dry fly ash collection system. According to him, the costs relating to the said two items are already borne by the applicants and that cannot be added to service charges. He stated that as a consequence, the value of service charges that is sought to be reduced comes to around Rs.410/- as against Rs.540/- per Metric Tonne.

2. Considering the above said plea, there will be an order of interim injunction against the respondents from recovering service charges in excess of Rs.410/- per Metric Tonne. Notice."

5. The learned Additional Advocate General appearing for the respondents 3 to 6 would submit that in the light of the above said order, the Writ Petition can be disposed of, subject to the outcome of the pending Review Applications.

6. Considering the submissions made by the learned counsel for the petitioner as well as the learned Additional Advocate General and other counsel appearing for the respondents, the following orders are passed:-

(i) The impugned proceedings of the respondents, namely, Per (FB) TANGEDCO Proceedings No.29, dated 1.3.2011, insofar as the petitioner is concerned, is set aside.

(ii) Following the interim order passed in M.P.Nos.1 to 1 of 2013 in Review Application Nos.55, 56 and 59 of 2013 dated 12.4.2017, the service charge of fly ash is fixed as Rs.410/- per Metric Tonne pending disposal of the Review Applications. It is made clear that the aforesaid order is passed subject to the outcome of the pending Review Applications.

7. In the result, the Writ Petition is disposed of.
Connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

asvm

To

1.The Chairman,
The Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

2.Chief Engineer/Civil Designs,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

3.Director (Generation),
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.

4.Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin.

+1 cc to Mr.S.K.Raameshur Advocate sr 12530

+1 cc to Mr.K.Rebello Advocate sr 11757

W.P.No.6590 of 2011
and

M.P.Nos.2,3 and 4 of 2011

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