IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.6616 of 2011
and
M.P.Nos.4 and 5 of 2011

Ramco Industries Ltd.,
Auras Corporate Centre
98 A, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 04. .. Petitioner

vs.

1.Union of India,
rep.by its Deputy Director,
Ministry of Environment & Forests,
146, Paryawaran Bhavan, Lodhi Road,
New Delhi - 110 003.

2.The State of Tamil Nadu,
rep.by its Chief Secretary,
New Secretariat,
Wallajah Road,
Chennai - 600 002.

3.The Tamil Nadu Generation & Distribution
Corporation Limited, rep.by its,
Chief Engineer (Civil)
5th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 600 002.

4.The Tamil Nadu Electricity Board,
rep.by its Chairman,
144, Anna Salai,
Chennai - 600 002.

5.The Superintending Engineer,
Mechanical II, Mettur Thermal Power Station,
Mettur Dam - 6.

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6.The Superintending Engineer,
Ennore Thermal Power Station,
Chennai – 57. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in the Notification dated 1.3.2011 bearing reference TANGEDCO Proceedings No.29, dated 01.03.2011 and the consequent communication in Lr.No.SE/M-II/MTPS/EE/O & AHS/F. Revised Dry Ash/D.No.176A/11 dt. 1.3.2011 issued by the 5th respondent and Lr.No.SE/MM-II/ETPS/EE/AHS/F. /D.296/11 dated 01.03.2011 issued by the 6th respondent and set aside the same as arbitrary and illegal and consequently direct the respondents to collect only the actual service charges incurred by the respondent.

For petitioner : Mr.Rahul Balaji
for M/s.R.Parthasarathy

For 1st respondent : Mrs.G.Hema, CGSC

For 2nd respondent : Mr.S.Navaneethan,
Additional Government Pleader

For respondents 3 to 6 : 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

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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

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

9) Maintenance charges for fly ash evacuation system, pipe lines & silo

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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."

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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 Notification dated 1.3.2011 bearing reference TANGEDCO

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Proceedings No.29 dated 1.3.2011 and the the consequent communication in Lr.No.SE/M.II/MTPS/EE/O & AHS/F. Revised Dry Ash/D.No.176A/11 dt. 1.3.2011 issued by the 5th respondent and Lr.No.SE/MM-II/ETPS/EE/AHS/F. /D.296/11 dated 01.03.2011 issued by the 6th respondent, in so far as the petitioner is concerned, are 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.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

asvm

To

1.The Deputy Director,
Ministry of Environment & Forests,
Government of India,
146, Paryawaran Bhavan, Lodhi Road,
New Delhi - 110 003.

2.The Chief Secretary,
New Secretariat,
Wallajah Road,
Chennai - 600 002.

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3.The Chief Engineer (Civil),
The Tamil Nadu Generation &
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5th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 600 002.

4.The Chairman,
The Tamil Nadu Electricity Board,
144, Anna Salai,
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5.The Superintending Engineer,
Mechanical II, Mettur Thermal Power Station,
Mettur Dam - 6.

6.The Superintending Engineer,
Ennore Thermal Power Station,
Chennai - 57.

+1cc to Mr.Sathish Parasaran, Advocate, S.R.No.12343
+1cc to Mr.Raameshwar, Advocate, S.R.No.12532
+1cc to the Government Pleader, S.R.No.12626

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and
M.P.Nos.4 and 5 of 2011

RR(CO)
RS(21/04/2017)

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