

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2017

PRONOUNCED ON : 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

REV.A.Nos.55,56,59,60 and 61 of 2013

M/s Madras Cements Limited,
Auros Corporate Centre,
98A, RK Salai, Mylapore,
Chennai – 600 004.
2013

.. Applicant in Rev.A.No.55 of

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. Tamil Nadu Generation & Distribution,
Corporation Limited rep. by its
Chief Engineer (Civil)
5th Floor, NPKKR Maligai
144, Anna Salai,
Chennai – 600 002.
4. Tamil Nadu Electricity Board,
Rep. by its Chairman
144, Anna Salai,
Chennai – 600 002.

5. The Superintendent Engineer,
Mettur Thermal Power Station,
Mettur Dam – 6.
6. The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin – 4.
7. TANGEDCO
North Chennai Thermal Power Station,
Rep. by its Chief Engineer,
Chennai – 120. .. Respondents in Rev.A.No.55 of 2013

Prayer : Rev.A.No.55 of 2013 : Review Application has been filed under Section 114 of CPC read with Order XLVII Rule 1 of C.P.C to review the order dated 01.02.2013 in W.P.No.5513 of 2011 by removing the reference to an agreement by the petitioner and fix the applicable rate for the petitioner at Rs.410/ton.

M/s Chettinad Cement Corporation Limited,
Rani Seethai Hall Building,
603, Anna Salai,
Chennai – 600 006. .. Applicant in Rev.A.No.56 of 2013

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. Tamil Nadu Generation & Distribution,
Corporation Limited rep. by its
Chief Engineer (Civil)
5th Floor, NPKKR Maligai
144, Anna Salai,
Chennai – 600 002.
4. Tamil Nadu Electricity Board,
Rep. by its Chairman
144, Anna Salai,
Chennai – 600 002.
5. The Superintending Engineer,
Mettur Thermal Power Station,
Mettur Dam – 6.
6. The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin – 4. .. Respondents in Rev.A.No.56 of 2013

Prayer : Rev.A.No.56 of 2013 : Review Application has been filed under Section 114 of CPC read with Order XLVII Rule 1 of C.P.C to review the order dated 01.02.2013 in W.P.No.5514 of 2011 by removing the reference to an agreement by the petitioner and fix the applicable rate for the petitioner at Rs.410/-ton.

Ultratech Cements Limited,
B-7, Gemini Parsn Manere 'B' wing,
5th Floor, New No.442, Old 602,
Anna Salai, Chennai – 600 006. .. Applicant in Rev.A.No.59 of 2013

Vs.

Prayer : Rev.A.No.59 of 2013 : Review Application has been filed under Section 114 of CPC read with Order XLVII Rule 1 of C.P.C to review the order dated 01.02.2013 in W.P.No.5515 of 2011 by removing the reference to an agreement by the petitioner and fix the applicable rate for the petitioner at Rs.410/ton.

M/s A.R.K.Wood and Metals Private Limited,

Represented by its Managing Director,
V.M.Radhakrishnan,
No.3, Ramaswamy Kounder Layout,
Subramaniapuram,
Coimbatore – 641 002.
2013

.. Applicant in Rev.A.No.60 of

Vs.

1. Tamil Nadu Electricity Board,
Rep.by its chairman,
No.800, Anna Salai,
Chennai – 600 002.

2. Tamil Nadu Generation & Distribution
Corporation Limited,
Rep.by its Chief Engineer (Civil/Headquarters),
5th Floor, NPKKR Maligai,
144 Anna Salai,
Chennai – 600 002.

3. The Chief Engineer,
Tamil Nadu Generation & Distribution
Corporation Limited,
Thoothukudi Thermal Power Station,
Thoothukudi – 628 004. .. Respondents in Rev.A.No.60 of 2013

Prayer : Rev.A.No.60 of 2013 : Review Application has been filed
under Section 114 of CPC read with 114 of C.P.C to review the order
dated 01.02.2013 in W.P.No.5823 of 2011.

M/s Tamil Nadu Ash Tech Private Limited,
Rep. by its Managing Director,
195, Panchu Complex,
N.H.Road,
Coimbatore – 641 001.
2013

.. Applicant in Rev.A.No.61 of

Vs.

1. Tamil Nadu Electricity Board,
Rep.by its chairman,
No.800, Anna Salai,
Chennai – 600 002.
2. Tamil Nadu Generation & Distribution
Corporation Limited,
Rep.by its Chief Engineer (Civil/Headquarters),
5th Floor, NPKKR Maligai,
144 Anna Salai,
Chennai – 600 002.
3. The Chief Engineer,
Tamil Nadu Generation & Distribution
Corporation Limited,
Thoothukudi Thermal Power Station,
Thoothukudi – 628 004. .. Respondents in Rev.A.No.61 of 2013

Prayer : Rev.A.No.61 of 2013 : Review Application has been filed under Order 47 Rule 1 R/w 114 of C.P.C to review the order dated 01.02.2013 in W.P.No.5824 of 2011.

For the Petitioners : Mr.Rahul Balaji & Madhan Babu

For the Respondents 3 to 7
in Rev.A.No.55 of 2013 : Mr.C.Manishankar,
Additional Advocate General
Assisted by Mr.S.K.Rameshwar
Standing Counsel for the TNEB

For the Respondents 3 to 6
in Rev.56 of 2013 & 59 of 2013 : Mr.C.Manishankar,
Additional Advocate General
Assisted by Mr.S.K.Rameshwar
Standing Counsel for the TNEB

For the Respondents 1 to 3 in

Rev.60 & 61 of 2013 : Mr.C.Manishankar,
Additional Advocate General
Assisted by Mr.S.K.Rameshwar
Standing Counsel for the TNEB

For the second Respondent
in Rev.A.Nos.55,56 & 59 / 2013 : Mr.S.Diwakar
Special Government Pleader

No appearance for first Respondent
in Rev.A.Nos.55,56 & 59 of 2013

COMMON ORDER

The Review Applications have been filed by the applicants against the order passed in W.P.No.5513 of 2011, W.P.No.5514 of 2011, W.P.No.5515 of 2011, W.P.No.5823 of 2011 and W.P.No.5824 of 2011, dated 01.02.2013.

2. According to the applicants, the writ petitions has been filed challenging the orders enhancing the service charges payable for dry fly ash lifted by the petitioners from the Thermal Power Stations of the respondent/TANGEDCO from Rs.350/- per MT to Rs.700 per MT as being wholly arbitrary, illegal and exorbitant. By order dated 01.02.2013, this Court in W.P.Nos.5513, 5514 of 2011 etc batch cases passed the final orders by 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. It is relevant to

extract the following portion of the orders 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.

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 01.03.2011 (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.

The writ petitions are disposed of in the above terms. No costs.

3. 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 since electricity charges were being paid separately and the dry Fly Ash Collection system had been erected by the Cement Companies and no payment could be claimed by TANGEDCO/TNEB and hence the inclusion of the same in the computation of service charges was done in error.

Therefore, in view of the said error in the computation of service charges relied upon for the purposes of the order dated 01.02.2013, the writ petitioners filed review petitions bearing Review Petition Nos.55,56 and 59 of 2013 to reduce the service charges fixed under the order dated 01.02.2013 by the charges associated with heads at Serial Nos.4 and 6 (i.e.536 - (76+50) and to modify the order and fix that the respondent-Board will be entitled to collect service charges of Rs.410/- MT. This Court, by order dated 29.04.2013 has granted interim direction directing the respondents Board to collect service charges payable at Rs.410/- per Metric Tonne.

4. In spite of the order passed by this Court, the respondent has not complied with the said order passed by the Court. Now, it is taken up final disposal. At this stage, counsel for the petitioner has made submission that service charges fixed at Rs.410/- per metric tonne passed by this Court, may be ordered in the review applications.

5. Learned Additional Advocate General would submit that the interim order dated 29.04.2013 passed in the review applications has been given effect by the Board.

6. In view of the submission made by the counsel for the petitioner that 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 already being borne separately by the petitioner/cement companies, since electricity charges were being paid separately and the dry Fly Ash Collection system had been erected by the Cement Companies and no payment could be claimed by TANGEDCO/TNEB, hence the inclusion of the same in the computation of service charges has been wrongly fixed in the final order in the aforesaid WP.

7. Therefore, in the light of the submissions made by the parties and in view of the said factual position, this Court has to modify the final order passed in writ petitions and direct the respondent to collect the service charges at the rate of Rs.410/- per MT in respect of item Serial Nos.4 and 6 & clauses associated with Serial No.4 and 6 are to be modified. Accordingly, the order passed in W.P.No.5513 of 2011 dated 01.02.2013 is modified and the Review Applications are partly allowed to the above extent. No costs.

Speaking order/Non speaking order

Index : Yes/No

Internet : Yes/No

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Ministry of Environment & Forests,

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2. The State of Tamil Nadu
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Tuticorin – 4.
7. TANGEDCO
North Chennai Thermal Power Station,
Rep. by its Chief Engineer,
Chennai – 120.

D.KRISHNA KUMAR, J.

adl

**Pre-Delivery Order made in
Rev.A.Nos.55,56,59,60 and 61 of 2013**

19.04.2017