



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2019

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHANW.P.(MD)Nos.434 and 435 of 2019WMP(MD).Nos.381 and 382 of 2019

M/s. Sundarpozzo,
rep. by its Proprietor,
Mr.S. Gnanaraj : Petitioner in W.P.(MD)No.434 of 2019

M/s. Vijay Agency,
rep by its Managing Partner,
Mr. B. Kannan Nataraj : Petitioner in W.P.(MD)No.435 of 2019

Vs.

1.The Chief Executive Officer,
NLC Tamil Nadu Power Limited,
Harbour Estate, Tuticorin - 628 101

2.The Ramco Cement,
NH44, Ramasamy Raja Nagar,
Thulkapatti, Virudhunagar District,
rep. by its Authorised Signatory.

3.India Cements,
Sankar Nagar, Thirunelveli District-627 357
rep. by its Authorised Signatory.

4.Hi Tech Fly Ash (India) Pvt. Limited,
HWP Colony, Mullakkadu,
Thoothukudi,
Rep. by its Authorised Signatory.

5.Sastha Enterprises,
55, Rajaji Road,
Srivilliputtur, Virudhunagar District,
rep. by its Authorised Signatory.

6.My Home Industries Pvt. Ltd.,
East Coast Road, Mela Maruthur,
Thoothukudi District,
rep. by its Authorised Signatory.



7.Chettinad Cement,
Rani Meyyammal Nagar,
Vedasandu Taluk,
Karikkali, Dindigul District,
rep. by its Authorised Signatory. .. Respondents in both W.Ps.

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Prayer in Both W.Ps.: These Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the first respondent Corporation from granting additional volume of fly ash by doubling the quantum of fly ash to the respondents 2 to 7 other than the volume prescribed in the tender notice NTPL/EOI-T.499/2015-16 dated 15.03.2016 and further direct the first respondent to call for fresh tender to allot any additional disposal of fly ash and bottom ash in accordance to the procedure prescribed under law by considering the petitioner's representation dated 26.09.2018 and 04.12.2018.

For Petitioner : Mr. G. Prabhu Rajadurai
in both W.Ps.

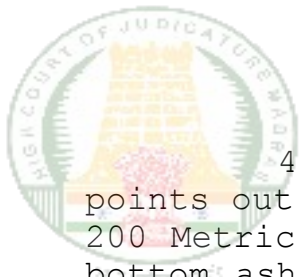
For R1 : Mr. K.R. Laxman in both WPs
For R3 : Mr.R.Parthasarathy in both WPs
For R4 : Mr. G. Aravinthan in both WPs
For R5 : Mr. V.S. Kisokkumar in both WPs
For R7 : Mr. K. Prabhakar in both WPs

C O M M O N O R D E R

The prayers in both the Writ Petitions are one and the same.

2. The first respondent issued a Tender Notice dated 15.03.2016 inviting expressions of interest for transportation and utilization of fly ash and bottom ash. The petitioner in WP(MD). No.434 of 2019 participated in the said tender process, but, his tender application was defective and therefore, not considered. The petitioner in the other Writ Petition in WP(MD).No.435 of 2019 did not even participate. Finally, allotment orders were issued in favour of the private respondents herein by the first respondent. The agreement between the first respondent on the one hand and the other individual respondents was for a period of two years. These Writ Petitions have been instituted since the petitioners apprehended that the first respondent was secretly modifying the terms of arrangement.

3. When the matter was taken up for hearing, the learned Standing Counsel appearing for the first respondent submitted that the quantity allotted to the allottees was doubled from 200 Metric Tons to 400 Metric Tons in respect of fly ash. As regards the bottom ash, the quantity of 75 Metric Tons was increased to 150 Metric Tons.



4. The learned counsel appearing for the Writ Petitioners points out that when the tender notice was issued, it mentioned only 200 Metric Tons of fly ash along with the corresponding quantity of bottom ash. The quantity of fly ash could not be doubled, without the first respondent issuing a fresh tender notification for the increase in quantity.

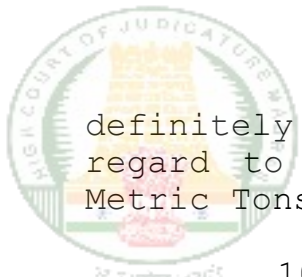
5. The learned Standing Counsel appearing for the first respondent pointed out that non-removal of fly ash as well as bottom ash will have severe consequences for them. If the fly ash and bottom ash is not regularly removed, due to accumulation, power generation will be affected. He also drew my attention to the Form enclosed along with tender notice, which provides for allotment of additional quantity, that may be required in excess of the allotted quantity. He therefore submitted that there is no illegality in the course of action adopted by the first respondent.

6. The learned counsel appearing for the private respondents submitted that they had initially applied for allotment of 400 Metric Tons and in fact, they had also paid Earnest Money Deposit accordingly.

7. The learned counsel appearing for the respondents 3 and 7 submitted that the Writ Petitioners and private respondents are manufacturers. He further submitted that as per the notification issued by the Ministry of Environment and Forests on 03.11.2009, while 20% of the fly ash will have to be allotted free of charge to the brick manufacturers, the remaining quantity can be given only to manufacturers. He also stated that the petitioners being traders have no right for seeking any allotment.

8. The learned Standing Counsel added in this regard that the allottees will have to remove not only fly ash but also bottom ash. The petitioners are interested only in fly ash and not bottom ash. The petitioner's approach is reflected from the fact that he did not tick the column meant for removal of bottom ash.

9. I am conscious that the first respondent is engaged in power generation. Therefore, this Court will have to carefully tread in the matter. As rightly pointed out by the learned standing counsel, removal of fly ash and bottom ash is crucial for the smooth functioning of the power plant. But, then, this court cannot lose sight of the constitutional mandate enshrined in Article 14. The original tender notice contemplates only removal of the 200 Metric Tons of fly ash per day together with corresponding quantity of bottom ash. The agreement period is up to May 2020. The quantity set out in the agreement cannot be suddenly doubled in order to favour the existing allottees. In the very nature of things, the first respondent will have to issue a fresh tender notice as regards the doubling of the quantity. Of course the original allotment made in favour of the private respondents will



definitely continue till May 2020. Interference is made only with regard to doubling of the quantity from 200 Metric Tons to 400 Metric Tons along with corresponding quantity of the bottom ash.

10. This Court directs the first respondent to issue a fresh tender notification as regards increase in the quantity of allotment of fly ash. The status quo as on date will continue till 31.05.2019. It is open to the first respondent to issue revised orders of allotment based on the fresh tender process with effect from 01.06.2019.

11. With the above observations, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12. The learned counsel appearing for the petitioners on instructions submitted that the petitioners are willing to take the fly ash as well as bottom ash at the rate of Rs.325/- per Metric Ton. This submission is placed on record.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS II)

To
The Chief Executive Officer,
NLC Tamil Nadu Power Limited,
Harbour Estate, Tuticorin - 628 101

+2 CC to M/s.K.R.LAXMAN, Advocate (SR-51511[F] dated 04/03/2019)

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-51799[F] dated 05/03/2019)

+4 CC to M/s.K.PRABHAKAR, Advocate (SR-51813[F] dated 05/03/2019)

+2 CC to M/s.R.PARTHASARATHY, Advocate (SR-51814[F] dated
05/03/2019)

+2 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-51618[F],51617)

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DS/ /SAR-2 (12.03.2019) 4P 13C