



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. Nos. 12677 to 12686 and 12688 to 12700 of 2011

WP No. 12677 of 2011

1. SRI VEERA FLY ASH (BRICKS)
REP. BY ITS MANAGING PARTNER MR.N.MOORTHY
36, COIMBATORE MAIN ROAD
VELLAKOVIL- 638 111
THIRUPUR DISTRICT
TAMIL NADU ... PETITIONER in WP No.12677 of 2011
2. K.G. FLY ASH BRICKS
REP. BY ITS PROPRIETOR MR.G.VARGOTHANAN
2/54 (S.NO.215/3) PERALAKATTUVALASU
VEERACHOLAPURAM POST-638701 KANGEYAM TALUK
THIRUPUR DISTRICT.
... PETITIONER in WP No.12678 of 2011
3. VASANTHAM BRICKS
REP. BY ITS PROPRIETOR MR.K.KARTHIKEYAN S.F.
NO.426/3D 6A VIRUGAVUR MAIN ROAD
CHITHALORE POST KALAKURICHI TALUK
VILLUPURAM DISTRICT.
... PETITIONER in WP No.12679 of 2011
4. SHRI NARAYANA BRICKS
REP. BY ITS PROPRIETOR MR.S.SRIRAM KUMAR S.
F.NO.343/5A KARATTUMEDU KEERANATHAM
SARAVANAMPATTI POST COIMBATORE-641035.
... PETITIONER in WP No.12680 of 2011
5. ASHOK BRICKS
REP. BY ITS PROPRIETOR MR.C.ASHOK KUMAR
4/33 GANDHI NAGAR SALEM-BANGALORE MAIN
ROAD JAGIR AMMAPALAYAM SALEM-636302.
... PETITIONER in WP No.12681 of 2011
6. VELMURUGAN FLY ASH BRICKS
COMPANY REP. BY ITS PARTNER MR.C.
MURUGANANTHAM S.F.NO.1148/5 KARUR MAIN
ROAD KARAYUR-638661 DHARAPURAM TALUK



THIRUPUR DISTRICT.

... PETITIONER in WP No.12682 of 2011

7. SHRI KUMARAN FLY ASH BRICK
INDUSTRY REP. BY ITS MANAGING PARTNER MR.T.
V.SUNDARAVADIVEL S.F.NO.156/2B AVINASI RD
SULUR PIRIVU NEELAMBUR VILL PALLADAM TK
COIMBATORE-641 0

... PETITIONER in WP No.12683 of 2011

8. S.S.K.FLY ASH BRICKS
REP. BY ITS PROPRIETOR S.K.ARTHANARI NO.29
VINAYAGAMPATTI YUIRIYAL POONGA ROAD
KANNANKURICHI POST SALEM-636 008.

... PETITIONER in WP No.12684 of 2011

9. BOSARAA FLY ASH BRICKS
REP. BY ITS PARTNER P.BOOJARAJ S.F.NO.200
OPP-MALAYAMPALAYAM PIRIVU KARUR-VELUR MAIN
ROAD THALAVAIPALAYAM POST KARUR DISTRICT.

... PETITIONER in WP No.12685 of 2011

10. S.S.BRICKS
REP. BY ITS PROP. MR.S.SUNDARAM S.F.NO.
31/3A/5 DINDUGAL MAIN ROAD K.KALLIKUDI
NORTH VILLAGE SRIRANGAM TALUK TRICHY
DISTRICT

... PETITIONER in WP No.12686 of 2011

11. VALLALAR HOLLOW BLOCK & FLY
ASH BRICKS REP. BY ITS PROPRIETOR MR.N.
BHASKAR SF.NO.238/4A ARUMADAL ROAD
SENGUNAM VILLAGE PERAMBALUR TALUK
PERAMBALUR DISTRICT-621 212.

... PETITIONER in WP No.12688 of 2011

12. S.R.S.FLY ASH BRICKS
REP.BY ITS PROPRIETOR MR.S.R.SIVALINGAM
25/4 SIVASWAMY STREET SALEM-636 001.

... PETITIONER in WP No.12689 of 2011

13. SARASWATHI PRECAST PREFAB
COMPANY REP.BY ITS MANAGING PARTNER MR.K.
JEGANATHAN 14-A RAJANKUPPAM ROAD
AYANAMBAKKAM POST MADURAVOYAL VIA
CHENNAI-95.

... PETITIONER in WP No.12690 of 2011

14. VINAYAKA CONSTRUCTION
CORPORATION REP.BY ITS MANAGING PARTNER MR.



S.VIRANNA RAO 40/16 KAMARAJ NAGAR 4TH ST
CHOOCLAIMEDU CHENNAI-94.

... PETITIONER in WP No.12691 of 2011

15. SRI RAJENDRAN BROTHERS
REP.BY ITS MANAGING PARTNER MR.S.PITCHAI NO.
6-A MAHESWARI NAGAR 100 FEET ROAD
VELACHERY CHENNAI-42.

... PETITIONER in WP No.12692 of 2011

16. ASIAN FLY ASH BRICKS
REP.BY ITS PROPRIETRIX MRS.K.RAMYA 27
VICTORY AVENUE THIRUMULLAIVOIL CHENNAI-62.

... PETITIONER in WP No.12693 of 2011

17. PSK BUILDTECH
REP.BY ITS PARTNER MR.SENTHIL KUMAR S.NO.
19/1 20 & 22 SOTHUPAKKAM ROAD PALAVAYAL
RED HILLS CHENNAI-52.

... PETITIONER in WP No.12694 of 2011

18. SHREE SAI FLY ASH BRICKS
INDUSTRIES REP. BY ITS PROPRIETOR G.
RAJENDRA NAIDU NO.315/1 KOTTAKUPPAM ROAD
BANDIKAVANOR VIA THINAGULAM PONNERI TALUK
THIRUVALLUR DISTRICT

... PETITIONER in WP No.12695 of 2011

19. MORRIS BRICKS REP. BY ITS
AUTHORISED SIGNATORY MR.S.ELUMALAI NO.2/3
KEELATHIPET VILLAGE SIRUKALATHUR KUNDRATHUR
POST SRIPERUMBUR TALUK KANCHEEPURAM DT-600069

... PETITIONER in WP No.12696 of 2011

20. SRS FALG BRICKS REP.BY ITS
PROPRIETOR J.BALASUBRAMANIYAN NO.25 MINJUR
KATTUR ROAD VAYALLOOR VILLAGE PONNERI TK
THIRUVALLUR DISTRICT.

.. PETITIONER in WP No.12697 of 2011

21. SRS INDUSTRIES REP.BY ITS
PROPRIETOR T.SHANKAR NO.25 S.NO.299 313/1
MINJUR-KATTUR ROAD VAYALLOOR VILLAGE
PONNERI TK TIRUVALLUR DT.

... PETITIONER in WP No.12698 of 2011

22. POWER FLY ASH BRICKS
REP. BY ITS PROPRIETOR T. SIVA KUMAR NO.82-
E MAIN ROAD PUDUPALAYAM
CUDDALORE - 607 001.



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... PETITIONER in WP No.12699 of 2011

23. AMMA FLY ASH BRICK & CO

REP. BY ITS PROPRIETOR MR.P.MURALI SF NO.
69/2B BYE -PASS ROAD (NEAR RTO CHECK POST)
GUMMIDIPOONDI 601 201 THIRUVALLUR DISTRICT.

... PETITIONER in WP No.12700 of 2011

Versus

1. UNION OF INDIA

REPRESENTED 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.,
REPRESENTED BY ITS CHAIRMAN
800, ANNA SALAI
CHENNAI-600 002.

3. METTUR THERMAL STATION

REPRESENTED BY ITS CHIEF ENGINEER
METTUR.

...Respondents 1 to 3 in WP 12677
to 12686/2011
and WP 12688 & 12689/2011

4. UNION OF INDIA

REP. BY ITS DEPUTY DIRECTOR MINISTRY OF
ENVIRONMENT & FOREST 146 PARYAVARAN BHAWAN
CGO COMPLEX LODHI ROAD NEW DELHI.

5. THE TAMIL NADU GENERATION &

DISTRIBUTION CORPORATION LTD. REP. BY ITS
CHAIRMAN 800 ANNA SALAI CHENNAI-2.

6. NORTH CHENNAI THERMAL

POWER STATION REP. BY ITS CHIEF ENGINEER
CHENNAI.

...Respondents 4 to 6 in WP 12690
to WP 12700/2011

Common Prayer in All WPs: Writ Petition filed under Article
226 of the Constitution of India praying to issue a Writ of



Mandamus, directing the second and third respondent herein to implement the Office Memorandum dated 18.03.2011, issued by the first respondent and Order of the Division Bench dated 16.07.2010, in W.A.No.1361 of 2010 and consequently forbear the second and third respondents from collecting any service charge from the petitioner in respect of the supply of Fly Ash to the petitioner.

For Petitioner : Mr. Rathina Asohan
in all the Writ Petitions

For R1 : Mr. K. Gunasekar, SPCCG
in all the Writ Petitions

For R2 & R3 : Mr. Abul Kalam
in all the Writ Petitions

COMMON ORDER

All the petitioners in these writ petitions are engaged in manufacture of Fly Ash bricks. According to the petitioners, hitherto, Fly Ash was considered as a waste and posing environmental hazard and therefore, the petitioners were allotted 100 MT of Fly Ash at free of cost by the third respondent. According to the petitioners, the Central Government also issued a notification in S.O.No.763 (E) Government of India, Ministry of Environment and Forest dated 14.09.1999 making it mandatory for the use of 50% of fly ash in the manufacture of clay bricks, tiles or blocks for all manufacturers who have their units within the radius of 100 km from coal or lignite based thermal power plants. Clause 2 (I) of the notification reads as follows:-

"Every coal or lignite based thermal power plant shall make available ash, for atleast 10 years from the date of publication of this Notification, without any payment or any other consideration, for the purpose of manufacturing Ash based products such as cement, concrete blocks, bricks, panels [or a combination thereof], or any other material or for construction of roads, embankments, dams, dykes or for any other construction activity."

2. Thus, as per the above Clause 2 (1) of the notification, all categories of Fly Ash based bricks, blocks, Concrete block, tiles manufacturing units were entitled to get the Fly Ash without any payment or any other consideration. While so, from 15.10.2009, the second and third respondents insisted for payment of Service Charges at Rs.100/- per MT for the supply of Fly Ash to the petitioners. Therefore, the Tamil



Nadu Fly Ash Bricks and Blocks Manufacturers Association filed W.P.No.12092 of 2010, before this Court for Writ of Mandamus, to forbear the Tamil Nadu Electricity Board and the Tamil Nadu Generation and Distribution Corporation Limited, from collecting Service Charges or any other charges for the supply of Dry ESP Fly Ash in terms of the notification dated 27.08.2003 of the Government of India, Ministry of Environment and Forest. Pending writ petition this Court declined to grant interim injunction. Aggrieved by the same, Writ Appeal No.1361 of 2010 was filed before the Division Bench of this Court. The Writ Appeal was disposed of on 16.07.2010 with a direction to the petitioners herein to approach the first respondent by way of an application for approval of collection of service charges from the members of the appellant association. Pursuant to the said direction issued by the Division Bench of this Court, the first respondent passed an office memorandum dated 26.10.2010 directing the Tamil Nadu Electricity Board not to collect any kind of Service Charges with immediate effect, from the members of the said Association and also not to levy any other charges like handling charge, maintenance charge that was hitherto imposed to the Fly Ash and bricks manufacturers in this state. Aggrieved by the office memorandum dated 26.10.2010, the Tamil Nadu Generation and Distribution Corporation Limited has filed the Writ Petition No.91 of 2011 before this Court. This Court refused to quash the office memorandum dated 26.10.2010 and directed the TANGENDCO to approach the first respondent and the first respondent was directed to consider the claim of TANGENDCO after affording them an opportunity of personal hearing. Thereafter, the office memorandum dated 18.03.2011 was passed by the first respondent reiterating that TANGENDCO shall not levy any charges for the supply of Dry ESP Fly Ash. According to the petitioners inspite of the office memorandum dated 18.03.2011, the second and third respondent continued to demand service charge from the petitioners association. Therefore, the present writ petition has been filed by the petitioners for a Mandamus directing the second and third respondent to implement the office memorandum dated 18.03.2011 issued by the first respondent and consequently forbear the second and third respondents from collecting any service charges from the petitioners in respect of the supply of Fly Ash.

3. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the materials available on record.

4. The issued involved in these batch of writ petitions is no longer res integra as it has been settled by the judgment passed by the Division Bench of this Court in W.A. Nos. 1299, 1510 & 1538 of 2013 dated 19.08.2014. In Paragraphs Nos.52 to 55 of the aforesaid judgment, the Division Bench of this Court



upheld the office memorandum issued by the first respondent and restrained TANGEDCO from demanding or levying any service charge for the supply of Fly Ash. Useful reference to the judgment of the Division Bench can be quoted as under.

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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 2005 issued by the Union of India, Ministry of Environment and Forest, is upheld. No costs. Consequently, connected miscellaneous petitions are closed.

5. In the light of the above decision of the Division Bench of this Court, this Court holds that 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. Accordingly, all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1.Union of India

Represented 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.,

Represented by its Chairman
800, Anna Salai
Chennai-600 002.

3.Mettur Thermal Station

Represented by its Chief Engineer
Mettur.



4.North Chennai Thermal Power station
rep., by its Chief Engineer, Chennai

+1CC to Mr.M.A.Kalam, Advocate, Sr.No.38545

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W.P. Nos. 12677 to 12686
and
WP Nos. 12688 to 12700/2011

PM (CO)
K.RK. (16.09.2021)