IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.11.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12687 of 2011 and
M.P.Nos.1 & 2 of 2011

S.M.T.Fly Ash Bricks,
Rep. by its Proprietrix C.Shanthi
No.1, Santhana Karuppusamy Kovil Street,
Sengathurai Road, Sulur,
Coimbatore 641 402. .. Petitioner

..Vs..

1.Union of India,
Rep. 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.,
Rep. by its Chairman,
800, Anna Salai, Chennai 600 002.

3.Mettur Thermal Station,
Rep. by its Chief Engineer,
Mettur. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents 2 & 3 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 Respondents 2 & 3 from collecting any service charge from the Petitioner in respect of the supply of Fly Ash to the Petitioner.

For Petitioner : Mr.Rathina Asohan

For Respondents : Mr.S.Madanagopal (for R1)
Senior Panel Counsel

Mr.L.Jai Venkatesh (for R2 & R3)
Standing Counsel for TANGEDCO

O R D E R

The petitioner in this writ petition is engaged in manufacture of Fly Ash bricks. According to the petitioner, hitherto, Fly Ash was considered as a waste and posing environmental hazard and therefore, the petitioner was allotted 100 MT of Fly Ash at free of cost by the third respondent. According to the petitioner, 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 petitioner. 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 petitioner 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 petitioner inspite of the office memorandum dated 18.03.2011, the second and third respondent continued to demand service charge from the petitioner association. Therefore, the present writ petition has been filed by the petitioner 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 petitioner in respect of the supply of Fly Ash.

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

4. The issued involved in this writ petition 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 TANGENDCO 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.

> 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.
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> 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, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs
To

1.Union of India,
Rep. 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.,
Rep. by its Chairman,
800, Anna Salai, Chennai 600 002.

3.Mettur Thermal Station,
Rep. by its Chief Engineer,
Mettur.

+1 cc to Mr.Rathina Asohan, Advocate Sr.NO.61022
+1 cc to Mr.M.Abdulkalam, Advocate Sr.NO. 61653

W.P.No.12687 of 2011 and
M.P.Nos.1 & 2 of 2011

KG(CO)
A.SK(08.12.2021)