IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition Nos.15158 to 15164 of 2013
and
M.P.Nos.1,1,1,1,1,1,1 of 2013
M.P.Nos.2,2,2,2,2,2,2 of 2013

M/s S.V.S.Hollow Block Industry
rep. by its authorised rep.Mr.M.Muniyandi,
No.284, Sree Venkata Sai Garden,
Somangalam Main Road, Somangalam,
Chennai 602 109. ...Petitioner in W.P No.15158 of 2013

M/s.Deva Bricks
rep. by its authorised rep Mr.M.Muniyandi
No.12, Pudukuppam, Annavalli Post
Chennai 607 003 ...Petitioner in W.P No.15159 of 2013

M/s.TSM Hi-Tech Bricks
rep.by its authorised rep Mr.M.Muniyandi
RS NO.15 Parikalpattu Road Kanniakoil
Pondicherry - 607 402 ...Petitioner in W.P No.15160 of 2013

M/s.Ranjani Fly Ash Bricks
rep.by its authorised rep Mr.M.Muniyandi
NO.200/4-A RIVER STREET
AZHAGIANATHAM VILLAGE (POST)
CHENNAI 607 109 ...Petitioner in W.P No.15161 of 2013

M/s.Priyanka Fly Ash Bricks
rep.by its authorised rep Mr.M.Muniyandi
R.S.NO.1/5 Keezh Kumara Mangalam Main Road
Udalapattu Village T.N.Palayam (Post)
Cuddalore ...Petitioner in W.P No.15162 of 2013

M/s.Shree Enterprises
rep.by its authorised rep Mr.M.Muniyandi
S.F.NO.209/4A Orathanadu Road
Therkunatham Neduvakkottai Post
Mannarkudi Taluk 614 001
Thiruvarur District ...Petitioner in W.P No.15163 of 2013

M/s.ACS Fly Ash Bricks
rep.by its authorised rep Mr.M.Muniyandi
NO.29 Pillayarkoil Street
Alagiyanatham Post
Varakkalpattu (Via)
Chennai-607 109 ...Petitioner in W.P No.15164 of 2013

Versus

1. Union of India,
   Rep. by its Deputy Director,
   Ministry of Environment, 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 Designs, III Floor,
   MPKKR Maaligai, 144, Anna Salai,
   Chennai 600 002.

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

5. The Chief Engineer/Civil Designs,
   TANGEDCO, 3rd Floor, Eastern Wing,
   NPKKR Maligai, 144, Anna Salai,
   Chennai 600 002. ..Respondents

Prayer in W.P.No.15158 To 15164 of 2013 : Writ Petition filed under Article 226 of the Constituion of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent in Lr.Nos.CE/CD/SE/CD/SE (NI) - IV/AEE-4/ F.ETPS - Free/D.923/13 dated 6/9.4.2013 CE/ CD/ SE/ CD & HP/SE (NI) - 2/AEE-3/ F.NCTPP- Stage II-Free/ SSC/D.731/13 dated 6.4.2013 CE/ CD/ SE/ CD & HP/SE (NI) - 2/AEE-3/ F.NCTPP- Stage II-Free/ SSC/D.732/13 dated 6.4.2013 CE/ CD/ SE/ CD & HP/SE (NI) - 2/AEE-3/ F.NCTPP- Stage II-Free/ SSC/D.721/13 dated 6.4.2013 CE/ CD/ SE/ CD & HP/SE (NI) - 2/AEE-3/ F.NCTPP- Stage II-Free/ SSC/D.736/13 dated 6.4.2013 CE/ CD/ SE/ CD & HP/SE (NI) - 2/AEE-3/ F.NCTPP- Stage II-Free/ SSC/D.723/13 dated 6.4.2013 CE/ CD/ SE/ CD & HP/SE (NI) - 2/AEE-3/ F.NCTPP- Stage II-Free/ SSC/D.735/13 dated 6.4.2013 respectively and quash the same as arbitrary and illegal in so far as it seeks to levy charges for collection of fly ash, thereby permitting the petitioner to collect the fly ash allotted to it free of charge and consequently direct the 5th respondent to refund all charges collected from the petitioner from 3.11.2009 being the date of the Ministry of Environment and Forests Notification S.O.2804 (E) when fly ash was mandated to be supplied free of cost to priority industries such as the petitioner.

For Petitioner : Mr. R. Parthasarathy
(in all WPs)

For Respondents: Mr. Diwakar,
(in all WPs) Central Govt. Standing Counsel for R1

Mr. Stalin Abhimanyu
Government Counsel for R2

No appearance for R3 to R5

COMMON ORDER

The common grievance of the petitioners in this batch of writ petitions is relating to the demand made by the fifth respondent, claiming service charges plus taxes and duties, if any, for supply of fly ash. Hence, the petitioners prayed to quash the letters issued by the respondents demanding levy of charges for collection of fly ash and consequently permit them to collect the fly ash at free of charge and issue a direction to the fifth respondent to refund the charges collected from 03.11.2009, being the date of the Ministry of Environment and Forests Notification S.O.2804(E) when fly ash was mandated to be supplied at free of cost to the priority industries, such as the petitioners.

2. The case of the petitioners is that they are the companies involved in manufacture and supply fly ash bricks and blocks. The fly ash is a waste product of the Thermal Power Industry and the alternative utilization of fly ash is regulated by the Notification of Ministry of Environment and Forests dated 14.09.1999 and the amended Notification dated 03.11.2009, which stipulated that fly ash brick manufacturers have to be treated as Priority Users and dry ESP fly ash must be available to them at free of charge. However, the fifth respondent imposed fee upon the fly ash brick manufacturers in the name of "Service charge plus taxes and duties", contrary to the above Notification dated 03.11.2009. Hence, these writ petitions.

3. Today, when the writ petitions are taken up for consideration, the learned counsel for the petitioners and the learned Central Government Standing Counsel appearing for the

first respondent submitted that the issue involved in these writ petitions is covered by a decision of the Division Bench of this court in W.A.Nos.1299, 1510 & 1538 of 2013 dated 19.08.2014, wherein it is held as follows:-

"49. It is not in dispute that the fly ash emerges as the by-product during the course of generating power through coal or lignite by the Thermal Power Plants. It is also not in dispute that such by-product emerging out of such power generation, if let loose without protection would cause pollution to the atmosphere, resulting assaults on human beings, other living creatures, plants and property. Therefore, it is the bounden duty of such Thermal Plants to have safeguard measures, so that such polluting material namely, fly ash is not let loose in the atmosphere and on the other hand, it is collected, dumped and removed in order to prevent pollution to the environment. When that being the mandatory obligation on the part of the power generating thermal plants through coal or lignite, they cannot be permitted to say that for doing the job of such collection and accumulation of fly ash, the huge expenditure met out by the TANGEDCO, has to be paid by the Brick Manufacturers. It is not that the said Brick Manufacturers volunteered themselves and wanted to purchase fly ash from the Thermal Power Plants on their own. On the other hand by virtue of the various notifications issued by UOI commencing from 14th, September, 1999, such Brick Manufacturers are compelled to take the fly ash and utilise the same in their brick manufacturing process to preserve the top soil. At this juncture, it is useful to refer paragraph 1 of sub-clause (1) of notification, dated 14th, September, 1999, which reads as follows:-

(i) No person shall within a radius of fifty kilometers from coal or lignite based thermal power plants, manufacture clay bricks or tiles or blocks for use in construction activities without mixing atleast 25 percent of ash (fly ash, bottom ash or pond ash) with soil on weight to weight basis.

50. Thus, it is manifestly clear that by virtue of such mandatory requirement, the Brick manufacturers are compelled to take the fly ash from the Thermal Power Plants and they are removing the fly ash by transporting at their cost from the stock yard. As already discussed

supra, these notifications were issued to achieve the twin object, namely to prevent the pollution as well as the exploration of the Top soil. When that being the case, the TANGEDCO cannot be justified in contending that the Brick Manufacturers have to meet out the service charges for providing the fly ash. At this juncture, it is also relevant to note that the remaining 80% of the fly ash is being sold to various other cement manufacturing companies and it is stated that such companies have also taken care of the establishment of plant and machineries for collecting the fly ash within the Thermal Power Stations.

51. A perusal of the relevant provisions under the Environment (Protection) Act 1986, would show that the first respondent/Union of India is empowered to issue the impugned proceedings and the TANGEDCO is bound by such directions. Section 3 of the said Act empowers the Central Government to take measures to protect and improve environment. Section 5 deals with power of Central Government to issue such directions including the power to direct closure, prohibition or regulation or any industry, operation of process.

Section 24 of the said Act deals with effect of other laws and to contemplate that the provisions of the Environment (Protection) Act, 1986, and the Rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Thus, overriding effect is clearly stated without any iota of doubt.

52. Considering all the above stated provisions of law and 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 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."

4. Following the above decision of the Division Bench of this Court, which holds good to the facts of the present case, all the writ petitions are allowed in line with the same. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst/rsh

To
1. The Deputy Director,
Union of India,
Ministry of Environment,
Lodhi Road,New Delhi 110 003.

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

3. The Chief Engineer/Civil Designs,
   Tamil Nadu Generation & Distribution,
   Corporation Limited,
   III Floor, MPKKR Maaligai,
   144, Anna Salai, Chennai 600 002.

4. The Chairman,
   Tamil Nadu Electricity Board,
   144, Anna Salai,
   Chennai 600 002.

5. The Chief Engineer/Civil Designs,
   TANGEDCO,
   3rd Floor, Eastern Wing,
   NPKKR Maligai, 144, Anna Salai,
   Chennai 600 002.

+1cc to the Government Pleader, S.R.No.46526, 46534

WP Nos. 15158 to 15164 of 2013

AJS(CO)
RGA(06/10/2021)