IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.10.2022**

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

**W.P.Nos.33430,33431,33432,33433,33434,
33435,33436,33437,33438,33439 and 33440 of 2012
&
M.P.Nos.1,1,1,1,1,1,1,1,1,1 and 1 of 2012**

W.P.No.33430 of 2012

K.Saravanakumar .. Petitioner in W.P.No.33430 of 2012

Vs.

1.The Government of India
Rep by its Deputy Director
Ministry of Environment & Forests
146, Paryavaran Bhawan
C.G.O.Complex,
Lodhi Road
New Delhi

2.The Chairman cum Managing Director
Tamilnadu Generation and Distribution
Corporation Limited
144, Anna Salai
Chennai-600 002

3.The Chief Engineer/Civil Designs
Tamilnadu Generation and
Distribution Corporation Limited
3rd floor, Eastern Wing
144, Anna Salai, Chennai-600 002

4.The Chief Engineer
Mettur Thermal Power Project
MTPP Stage III
Mettur dam-6
Salem District ... Respondents in W.P.No.33430 of 2012

PRAYER in W.P.No.33430 of 2012: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records pertaining to the impugned part of demanding a sum of Rs.300/- per Tonne towards service charges plus taxes and duties if any applicable has to be remitted at MTPP Stage III by you in Condition No.1 in the Allotment Order in Letter No.CE/CD/ SE/CD/EE2/ AEE/F.MTPS/ SCC/D.1890/12 dated 3.10.2012 on the file of the 3rd respondent quash the same and consequently direct the respondents 2 to 4 herein to implement the Office Memorandum - File No.9-8/ 2005-HSMD dated 18.3.2011 and the Notification S.O.No.2804(E) dated 3.11.2009 issued by the 1st respondent and forbear them from collecting any service charge plus taxes and duties from the petitioner in respect of Fly Ash allotment to be used for manufacturing the Bricks, Blocks and Tiles etc.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.V.Chandrasekaran, SPC for R1

Mr.M.Abukalam for R2 to 4

COMMON ORDER

When the matters are taken up for hearing, the learned counsel appearing on either side submitted that the issue involved in these Writ Petitions is covered by the decision rendered by a Single Bench of this Court in W.P.Nos.10033 of 2011 and batch dated 09.09.2015. The order dated 09.09.2015 referred supra is extracted hereunder:

> " *When the matters are taken up for hearing, the learned counsel appearing on either side submitted that the issue involved in these writ petitions is covered by the decision rendered by a Division Bench of this Court in TAMIL NADU FLY ASH BRICKS AND BLOCK'S MANUFACTURERS ASSOCIATION AND OTHERS V. M/S TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD., ((2014) 5 Law Weekly 492), which has been taken note of in a batch of writ petitions in W.P.Nos.5898 of 2008 etc., batch dated 22.01.2015 by the learned single Judge of this Court. The order dated 22.01.2015 referred supra is extracted hereunder.*
>
> *Since the relief sought for in all these writ petitions are more or less identical and common grounds were raised by all the learned counsels appearing for the petitioners and the prayer made in the writ petitions having been resisted by the learned counsel appearing for the respondents, advancing common arguments, the writ petitions*

were heard together and are disposed of by this common order.

2.The learned counsels appearing for the parties submits that in similar circumstances, the Hon'ble Division Bench of this Court in the case TAMIL NADU FLY ASH BRICKS NAD BLOCK'S MANUFACTURERS ASSOCIATION, CHENNAI v. TAMIL NADU GENERARATION AND DISTRIBUTION CORPORATION LTD., [(2014) 6 MLJ 275], allowed the Writ Appeals, filed by the Writ Petitioners. For better appreciation, the relevant portions of the order passed by the Hon'ble Division Bench is extracted below:

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:-*

(1) 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 at least 25 per cent 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 the Central Government to issue such directions including the power to direct closure, prohibition or regulation or any industry, operation or 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, the overriding effect is clearly stated without any iota of doubt.

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 2011 issued by the Union of India, Ministry of Environment and Forest, is upheld. No costs. Consequently, connected miscellaneous petitions are closed.

5.The learned counsel appearing on either side agree that the issue involved in these batch of cases are squarely covered in favour of the petitioners by the decision of the Hon'ble Division Bench, referred supra.

6.Following the decision of the Hon'ble Division Bench, referred supra, the Writ Petitions are allowed on the same lines. No costs. Consequently, connected Miscellaneous Petitions are closed.

2. Accordingly, all these writ petitions are allowed on the same lines. No costs. Consequently, connected miscellaneous petitions are closed."

As the earlier Writ Petitions are connected with the same order and issue in these Writ Petitions are one and the same, the Writ Petitions are allowed on the same lines. No costs. Consequently, connected miscellaneous petitions are closed.

13.10.2022

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Internet:Yes
Speaking/Non speaking order

<u>N. SATHISH KUMAR, J.</u>
kpr

To

1.The Deputy Director
Government of India
Ministry of Environment & Forests
146, Paryavaran Bhawan
C.G.O.Complex,
Lodhi Road, New Delhi

2.The Chairman cum Managing Director
Tamilnadu Generation and Distribution
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4.The Chief Engineer
Mettur Thermal Power Project
MTPP Stage III
Mettur dam-6, Salem District

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