IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.7818 to 7820 of 2012 &
W.P.No.13386 of 2012 &
M.P.Nos 1 of 2012; 1 and 2 of 2012; 1 of 2012 &
W.M.P.Nos.22315 to 22318 of 2016

M/s India Cements Ltd.,
rep. By its Vice President (Legal Affairs)
Mr.Rajan Ramani,
“Coromandel Towers'
93, Santhome High Road,
RA Puram, Chennai – 600 028 ...Petitioner in W.P.Nos.7818 of 2012 and 7820 of 2012

M/s Madras Cements Ltd.,
rep. By its Assistant General Manager
(Legal), Auras Corporate Centre,
98A, RK Salai, Mylapore,
Chennai – 600 004 ...Petitioner in W.P.No.7819 of 2012

M/s. Chettinad Cement Corporation Ltd.,
rep. By its Company secretary,
Rani Seethai hall,
No.603, Anna Salai,
Chennai – 600 006 ...Petitioner in W.P.No.13386 of 2012

Vs.

1. Tamil Nadu Generation & Distribution,
Corporation Limited, rep. By its
Chief Engineer (Civil)
5th floor, NPKKR Maligai,
144, Annasalai, Chennai – 600 002

2. The Executive Engineer,
Tuticorin Thermal Power Station,
TANGEDCO, Tuticorin – 4

3. BOAB Audit (Concurrent Audit)
Tamilnadu Electricity Board,
Anna Salai,
Chennai – 600 002 ... Respondents in W.P.Nos.7818 of 2012 and 7820 of 2012

1. Tamilnadu Generation and
Distribution Corporation Ltd.,
Chief Engineer (Civil)
5th floor, NPKKR Maligai,
144, Anna salai,
Chennai – 600 002

2. The Superintending Engineer,
Mettur Thermal Power Station,
Mettur Dam – 6

3. The Chief Engineer,
Tuticorin Thermal Power Station,
Tuticorin – 4

4. The Chief Engineer,
North Chennai Thermal Power Station,
Chennai

5. BOAB Audit (Concurrent Audit)
Tamilnadu Electricity Board,
Annasalai, Chennai - 2 ...Respondents in W.P.Nos.7819 of 2012 & W.P.No.13386 of 2012

Prayer in W.P.No.7818 of 2012

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records comprised in the impugned order in LR.No.EE/EM-II/TTPS/F.25/D.29/12 dated 27.01.2012 issued by the 2nd respondent and quash the same as being arbitrary, illegal and guilty of non-application of mind and consequently direct the respondents to treat the petitioner as belonging to LT Industrial III B tariff and to reimburse any amounts already collected from the petitioner on the basis of the impugned order of proceedings pursuant thereto.

Prayer in W.P.No.7819 of 2012

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records comprised in the impugned order in LR.No.SE/P&A/DFC/AO/AAO/Bills/AS/CASH/TTPS/D.No.778/11 dated 15.10.2010 and signed on 15.10.2011 and the consequential LR.No.EE/EM-III/TTPS/F.Ash Silo/D.637/12 dated 23.01.2012 and quash the same as being arbitrary, illegal and guilty of non-application of mind and consequently direct the respondents to treat the petitioner as belonging to LT Industrial III B tariff and to reimburse any amounts already collected from the petitioner on the basis of the impugned order or proceedings pursuant thereto.

Prayer in W.P.No.7820 of 2012

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records comprised in the impugned order in LR.No.EE/EM-III/TTPS/F.Ash Silo D.637/12 dated 23.01.2012 issued by the 2nd respondent and quash the same as being arbitrary, illegal and guilty of non-application of mind and consequently direct the respondents to treat the petitioner as belonging to LT Industrial III B tariff and to reimburse any amounts already collected from the petitioner on the basis of the impugned order or proceedings pursuant thereto.

Prayer in W.P.No.13386 of 2012

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records comprised in the impugned order in LR.No.SE/P&A/DFC/AO/AAO/Bills/AS/CSH/TTPS/D.NO.792/11 dated 03.11.2010 and signed on 02.11.2011 and the consequential letter in Lr.No.EE/EM-II/TTPS/F.26/D.30/12 dated 29.01.2012 issued pursuant to purported audit objections of the 5th respondent and high tension bill for the month of April 2012 issued by the first respondent and quash the same as being arbitrary, illegal and guilty of non-application of mind and consequently direct the respondents to treat the petitioner as belonging to LT Industrial III B tariff and to reimburse any amounts already collected from the petitioner on the basis of the impugned order or proceedings pursuant thereto.

W.P.No.7818 of 2012

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
Mr.Abul Kalam and
Mr.J.Venkatesh for R1 to R3

W.P.No.7819 of 2012

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
Mr.Abul Kalam and
Mr.J.Venkatesh for R1 to R5

W.P.No.7820 of 2012

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran
Additional Advocate General
Mr.Abul Kalam and
Mr.J.Venkatesh for R1 to R3

W.P.No.13386 of 2012

For Petitioner : Mr.T.Balaji &
Mr.Praveen Kumar

For Respondents : Mr.J.Ravindran
Additional Advocate General
Mr.Abul Kalam and
Mr.J.Venkatesh for R1 to R5

COMMON ORDER

Since the issue involved in all the Writ Petitions pertain to the challenge of the revised electricity consumption tariff in relation to the fly ash collection system, they are taken up together and a Common Order is being passed.

2. The case of the Writ Petitioners is that a Notification dated 14.09.1999 was issued by the Ministry of Environments and Forests for regulating the utilisation of fly ash. The said notification came to be amended subsequently in Notification S.O.2804(E) dated 03.11.2009. The respondents, being principal operator of thermal power generating plants, in furtherance of and consequent to the said Notification issued in the year 1999 by the Ministry of Environments and Forests, was faced with a situation where it did not have funds to comply with the Pollution Control norms to set up such fly ash collection systems. Therefore, the Tamil

Nadu Electricity Board came up with a scheme, whereby the cement plants within the State were to enter into Memorandum of Understanding, whereby the cement plants were to put up fly ash collection systems, investing substantial capital of their own, since the Tamilnadu Electricity Board did not have sufficient resources of its own for undertaking such capital investments.

3. Therefore, the petitioners were approached by the Tamilnadu Electricity Board and entered into a separate Memorandum of Understanding in respect of each of the units at thermal power stations of the Tamilnadu Electricity Board and it was decided in the meeting by the Cement Factories and Tamilnadu Electricity Board that the Pressurized Dense Fly Ash Collection System, [in short, referred to as 'PDFACS' herein] were to be installed by each cement company at their own cost, which would become the property of the Board and the company would have no right over the electrical, mechanical and civil structure and equipments installed. The cement companies were required to pay service charges on fly ash at the rate charged by the Board from time to time, which was originally at Rs.60/- and subsequently stood at Rs.350/-. In addition thereto, operation, maintenance of the system, power and water

charges were to be paid. The cement companies were required to collect 100% fly ash with 20% of such fly ash to be spared to the Tamilnadu Electricity Board for allotting the same to other industries and the same had came into effect from the date of commissioning of the complete system. All of the charges, including electricity charges are being collected by the TANGEDCO from the date of commissioning of the PDFACS system. While so, the petitioners received a communication quoting the board proceedings dated 07.04.1992 that they have to pay the enhanced security deposit on the basis of the board audit objection dated 30.09.2011. Accordingly, Demand Notices were issued informing the petitioners that LT service connections operated by the petitioners should be converted into HT Commercial Tariff connection. Hence the said proceedings have been challenged mainly on the ground that converting the service connection Tariff of PDFACS maintained and operated by the petitioners from one category to the other is not maintainable, since PDFACS forms integral part of the system of the thermal generating plant and the same being used for industrial purpose and cannot be classified as tariff for commercial service connection. The impugned order of the respondents is based entirely on the audit slip, which has failed to consider the circumstances surrounding in the Memorandum of Understanding between the petitioners and

Tamilnadu Electricity Board, hence the impugned orders sought to be quashed.

4. It is the contention of the respondents in the counter that the impugned order has been issued on the basis of audit report and Tamilnadu Electricity Code Audit Slip No.11 dated 15.02.2011. Further, as per the Regulation issued by the Tamilnadu Supply Code, when the total connected load exceeds 112 KW, the intended consumer has to be treated as H.T. consumer and the petitioners are provided with H.T.Connection by providing 6.6 KV / 415V transformer with the total connected load of 617.1KW. Hence it is their contention that the petitioners have not produced industrial activity certificate and when the petitioner sought to pay current consumption charges as per Rules, they filed the Writ Petitions. According to them, when the tariffs to the connected load exceeds 112 KW, it should be treated as H.T. Consumer and not as commercial activity. Therefore, the impugned orders are well within the Act and Regulations.

5. The learned counsel for the petitioners brought to the notice of this Court that as per the Notification issued by the Central Government, it is the duty of the thermal power companies to remove all the fly ash to be

provided air pollutions, it is purely and entirely the responsibility of the TANGEDCO to remove fly ash, 80% of the flash has to be given to the cement manufacturers and remaining 20% to be given to the brick manufacturers. The Memorandum of Understanding has been executed between Tamilnadu Electricity Board and the petitioners. When it is agreed that fly ash collection system has to be installed by the cement companies at their own costs and such collection system, become the property of the Board, the service charges of the fly ash at the rate charged by the board from time to time, been paid, what was required to be paid by the cement companies is only water charges, power tariff and all these days, when the electricity charges were paid on the industrial tariff, now the impugned demands have been made demanding the commercial tariff. Further, such demand has been made only in pursuant to the audit objections made by the Board.

6. It is also the contention of the learned counsel for the petitioners that it is only the Tamilnadu Electricity Board Unit from where they supplied the flyash, therefore, at no stretch of imagination such unit should be treated as under HT Commercial tariff. Therefore, merely because newly fly ash collection system has been set up as per the Memorandum of

Understanding, the commercial tariff cannot be collected, hence according to him, the impugned orders cannot be sustained.

7. Whereas, on the other hand, the learned Additional Advocate General appearing for the respondents submitted that the cement companies have earned lot of money out of flyash collections and they are liable to pay the commercial tariff and the cement companies does not come within the industrial activities and their activities are under commercial activities, therefore, as per the demand, the petitioners are liable to pay the amount and the impugned orders are valid.

8. Heard the learned counsel on either side and perused the documents placed on record.

9. It is not in dispute that the Ministry of Environmental Engineer issued a notification on the fly ash collection in the thermal plant and the notification also incorporated the manner of primary connection and the utilisation of flyash in the industries such as brick and cement manufacturers. The revenue collected from the sale of flyash are primarily utilised for the developmental activities.

10. From the above notification, it is the primary responsibility of the Tamilnadu Electricity Board to remove all the fly ash collected in the thermal plant, as indicated in the notification. At this stage, it appears that the respondents entered into Memorandum of Understanding with the Writ Petitioners and perusal of the same, would indicate that fly ash collection system to be installed in the cement companies at their own costs and the said systems will become property of the Board. The cement companies will have no right over the electrical, mechanical and civil structures. The other terms and conditions with regard to the rate of service charge, service tax etc., the cement company also deposited in advance one month proceeds of flyash, which will be issued to them.

11. Apart from that, out of 100% fly ash generated, 20% of the fly ash should be spared to the Tamilnadu Electricity Board for allotting the same to the other industries. The cement company has to pay 80% of the charges towards the water and current consumptions, since they have allotted 80% of the collection. The reading of the Memorandum of Understanding itself would reveal that the ownership of the flyash will always vest with the Electricity Department and it is their primary duty to sell it to other industries. Accordingly, as per the notification, 80% of the fly

ash have been sold to the cement companies at the various rates fixed from time to time. The only requirement of the cement company is to put up the fly ash collection at their own cost and same will be the property of the Tamilnadu Electricity Board. When the entire sale and despatch of the fly ash vest with the Tamilnadu Electricity Board, all the charges and their collection agents, fly ash collection system, electricity charges, is only as per industrial tariff. Therefore, it cannot be construed to mean that the respondents are doing any commercial activities in the fly ash collection system, only for the purpose of collecting the fly ash, the collection system has been installed by the petitioners. However, the system itself, as per Memorandum, belongs only to the Government, viz., the Board, such being the position, converting the existing tariff, viz., industrial tariff to the commercial tariff to their own unit does not arise at all. Admittedly, the cement manufactures come under the industrial activity.

12. Be that as it may, virtually, the Tamilnadu Electricity Board is consuming the power for supply of fly ash, therefore, merely because some audit objections have been raised at later point of time, they cannot change the existing tariff from the industrial purpose to the commercial purpose on the ground that existing load exceeds 112 KW, therefore, this Court is of

the view that when the Tamilnadu Electricity Board has consumed the electricity for their own unit, for supply of flyash, merely because the flyash system has been erected and installed by the Writ Petitioners, on the basis of audit objections, the demands cannot be raised for the commercial tariff.

13. In such view of the matter, this Court is of the view that the entire demand notices is without non-application of mind. When the Tamilnadu Electricity Board itself is the owner of the unit and for the consumption of electricity in their Unit, they cannot convert the existing industrial tariff to commercial tariff, mainly on the ground that the respondents have been earning profits on their industrial activities.

Accordingly, the impugned orders are set aside and the Writ Petitions are allowed. Consequently, connected Miscellaneus Petitions are closed. No costs.

23.11.2022

Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking Order
ssd

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N.SATHISH KUMAR, J.,

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