



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.9834 to 9845 of 2013 and
M.P.Nos.1 to 1 of 2013

- 1.AMMAN HOLLOW BRICKS ... PETITIONER in WP No.9834 of 2013
1/49-A SENGAAKADU AVINASHI GOUNDAMPALAYAM
SENGAPPALLI POST TIRUPPUR DISTRICT REP. BY
ITS PROPRIETOR S.KOMARASAMY.
- 1.JAYANTHI HOLLOW & FLY ASH ... PETITIONER in WP No.9835 of 2013
BRICKS NO.24/6-B NEAR TNSTC BRANCH OFFICE
METTUR DAM SALEM DISTRICT REP. BY ITS
PROPRIETOR M.K.NEHRU
- 1.KANNAN HOLLOW BRICKS ... PETITIONER in WP No.9836 of 2013
OLD NO.15 NEW NO.16 KARICHI GOUNDAN
PALAYAM KANCHEE KOIL ERODE DISTRICT REP.
BY ITS PROPRIETOR K.L.SHANMUGAM
- 1.LAKSHMI BRICKS ... PETITIONER in WP No.9837 of 2013
14/4 KULLAMPALAYAM ERODE ROAD
KARAIVAICKAL GOBI ERODE DISTRICT REP. BY
ITS PROPRIETOR N.LAKSHMI.
- 1.MANI HOLLOW BRICKS ... PETITIONER in WP No.9838 of 2013
BHAVANI MAIN ROAD PERUNDURAI ERODE
DISTRICT REP. BY ITS PROPRIETOR P.C.
VISWANATHAN
- 1.S.A.HOLLOW BRICKS ... PETITIONER in WP No.9839 of 2013
VEERAKKAL NANGAVALLI VIA METTUR TALUK
SALEM DISTRICT REP. BY ITS PROPRIETOR S.
APPUCHI
- 1.SAKTHI CONCRETE BRICKS ... PETITIONER in WP No.9840 of 2013
S.F.NO.239/3-A THUNDUKADU THOTTAM
VEERAPPAMPALAYAM ERODE DISTRICT REP. BY
ITS PROPRIETOR K.JAYAKODI
- 1.SRI AMMAN HOLLOW BRICKS ... PETITIONER in WP No.9841 of 2013
S.F.NO.182 SAPPATTANAICKENPALAYAM
MORATTUPALAYAM POST UTHUKULI BLOCK
TIRUPPUR DISTRICT REP. BY ITS PROPRIETOR T.M.PERIYASAMY.



WEB COPY

1.SHRI AMMAN HOLLOW BRICKS ... PETITIONER in WP No.9842 of 2013
VEERAKKAL SCHOOL STOP VEERAKKAL POST SALEM
DISTRICT REP. BY ITS PROPRIETOR S.NACHIMUTHU

1.SRI ANGALAMMAN HOLLOW BRICKS ..PETITIONER in WP No.9843 of 2013
93 TIRUPPUR ROAD UTHUKULI POST TIRUPPUR
DISTRICT REP. BY ITS PROPRIETOR S.P.RAJU.

1.VISUDHAN INTERLOC BLOCK AND ..PETITIONER in WP No.9844 of 2013
HOLLOW BRICKS SEDARPALAYAM MORATTUPALAYAM
POST UTHUKULI R.S. TIRUPPUR DISTRICT REP.
BY ITS PROPRIETOR S.A.KANDASAMY

1.MALATHI BRICK INDUSTRY ... PETITIONER in WP No.9845 of 2013
37/3A PIDARI AMMAN KOIL STREET POOVAM
VARICHIKUDI POST KARAICAL REP. BY ITS
PROPRIETOR MALATHI

Vs

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

2.The Chief Engineer/Civil Designs,
Tamilnadu Generation and
Distribution Corporation Limited,
3rd Floor, Eastern Wing, NPKRR Maaligai,
144, Anna Salai, Chennai - 2.

3.The Chief Engineer,
Mettur Thermal Power Project,
MTPP State III,
Mettur Dam- 6,
Salem District.

... Respondents in all WP's

Prayer in WP No.9835 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 paid by you" in connection No.1 in the allotment order in Lr.No.CE/CD/SE/CD/EE2/AEE/F.MTPP-Stage III/SSC/D.496/13 dated 27.03.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 to implement the



Office Memorandum - File No.9-8/2005-HSMD dated 18.03.2011 and the Notification S.O.No.2804 (E) dated 03.11.2009 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.

WP No.9835 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.497/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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

WP No.9836 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.498/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9837 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.499/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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

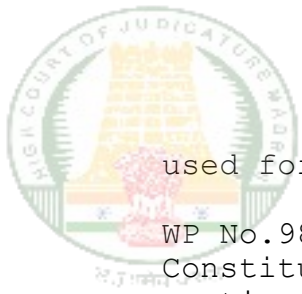


forbear them from collecting any service charge plus taxes and duties from the petitioner in respect of Fly Ash allotment to be used for manufacturing the Bricks, Blocks and Tiles etc.

WP No.9838 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.500/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9839 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.501/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9840 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.503/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9841 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.505/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9842 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.504/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9843 of 2013

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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.506/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9844 of 2013: Petition filed under Article 226 of the



Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD/ EE2/AEE/ F.MTPP-Stage III/SCC/ D.507/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

WP No.9845 of 2013: Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 Lr.No.CE/ CD/SE/CD&HP/ SE(NI)/ AEE/ F.MTPS- FREE/SSC/ D.452/13 dated 27.3.2013 on the file of the 2nd respondent, quash the same and consequently direct the respondents 2 and 3 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.

In all WPs

For Petitioners : Mr.V.Elangovan

For 1st Respondent : Mr.Rajesh Vivekanandhan
Senior Panel Counsel

For Respondents 2 & 3 : Mr.M.Abulkalam
Standing Counsel
for TANGEDCO

COMMON ORDER

The demand notices issued by the respondent TANGEDCO invoking the terms and conditions of Memorandum of Understanding executed at Headquarters/TNEB with the petitioners company and the TANGEDCO are under challenge in the present writ petitions.

2.The petitioners are the companies and the manufacturer of



bricks and tiles. The petitioners state that the brick manufacturers are exclusively using the dry fly ash as the basic raw material for manufacturing bricks, tiles etc. In this regard, admittedly, the contract was signed between the petitioners company and the respondent TANGEDCO. Based on the Memorandum of Understanding between the parties, the petitioners were collecting the fly ash and using the same for manufacturing of bricks, tiles.

3.The respondents also conducted inspection regarding the performance of the terms and conditions of the contract periodically and invoked Clause~1 of the Memorandum of Understanding and issued the impugned demand notices.

4.The learned counsel for the petitioners strenuously contended that no opportunity was provided to the petitioners enabling them to submit their defects in respect of the lapses noticed by the TANGEDCO authorities. Even the nature of lapses, loss, if any, occurred and its details are absent in the impugned orders. Under those circumstances, the petitioners are constrained to move the present writ petitions.

5.The learned counsel for the petitioners is of an opinion that the petitioners are entitled for an opportunity of presenting their case and no such opportunity was offered and the demand notices impugned were issued based on the unilateral decision taken by the TANGEDCO authorities.

6. In support of the said contention, the learned counsel for the petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of State of Karnataka vs. Shree Rameshwara Rice Mills, Thiruthahalli reported in (1987) 2 SCC 160, particularly paragraphs 7 and 8, which reads as under:~

".....

7.On a consideration of the matter we find ourselves unable to accept the contentions of Mr.Iyenger. The terms of Clause 12 do not afford scope for a liberal construction being made regarding the powers of the Deputy Commissioner to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. The crucial words in Clause 12 are 'and for any breach of conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party?'. On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If it was the intention of the parties that the officer acting



WEB COPY

on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of Clause 12 would have been entirely different. It cannot also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages, as pointed out by the Full Bench, is a subsidiary and consequential power and not the primary power. Even assuming for argument-s sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12.

8. We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed.?"

7. In the case of J.G. Engineers Private Limited vs. Union of India and another reported in (2011) 5 SCC 758 at paragraphs 19 and 20, which reads as under:~

"19. In fact the question whether the other party committed breach cannot be decided by the party alleging breach. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum, that is, a court or an Arbitral Tribunal.

20. In State of Karnataka v. Shree Rameshwara Rice



WEB COPY

Mills this Court held that adjudication upon the issue relating to a breach of condition of contract and adjudication of assessing damages arising out of the breach are two different and distinct concepts and the right to assess damages arising out of a breach would not include a right to adjudicate upon as to whether there was any breach at all. This Court held that one of the parties to an agreement cannot reserve to himself the power to adjudicate whether the other party has committed breach. This Court held: (SCC p. 164, paras 7~8)

'7. ... Even assuming for argument-s sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12.'

8. We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed.'

8. Relying on the above judgments, the learned counsel for the petitioners reiterated that the petitioners may be driven to the Civil Court only in the event of permitting them to present their case. The basis on which a decision is taken for issuing an order of demand itself is not explained to the petitioners and under those circumstances, the petitioners have chosen to file the present writ petitions. Thus, the order impugned is directly in violation of the principles of natural justice and the present writ petitions are to be considered.

9. The learned counsel appearing on behalf of the



respondents 2 and 3 made a submission that admittedly, the dispute arises based on the contractual obligation between the parties. The impugned orders are in tune with the contract conditions, specifically condition No.1. Thus, the writ petitions are not maintainable, as such disputes are to be adjudicated before the competent civil Court of law and not in a writ proceedings. The respondents also narrating the facts and circumstances to establish that the petitioners have violated certain terms and conditions and the manner in which the calculations are made and the impugned demand notices are issued.

10. However, this Court is of the considered opinion that all such disputed facts cannot be adjudicated in a writ proceedings, as it requires examination of documents in original and evidences and even oral evidences. Prima facie, it is raised that no opportunity was provided to the petitioners, even to present their case, and it is to be considered. In a contractual obligation between the parties, whether such a show cause notice or opportunity is required to be given or not is to be considered. No doubt, it depends on the facts and circumstances and also the terms and conditions agreed between the parties. However, it cannot be concluded by holding that in each and every case, a show cause notice and an opportunity of presenting the case must be provided in contractual obligations. Thus, a writ cannot be entertained merely on the ground that no opportunity to present the case is given in the event of the dispute with reference to the terms and conditions of the contract between the parties.

11. It is needless to state that the terms and conditions agreed are known to the parties. Once agreed to the terms and conditions are violated, the question of further opportunity by any one of the parties would not arise. A dispute arises in the present case, as the petitioners state that an opportunity is to be given to present their case. This Court is of an opinion that such a procedure, which is not agreed between the parties need not be considered, as providing of an opportunity is also a dispute, which is to be considered with reference to the agreed terms and conditions of the contract.

12. The concept of principles of natural justice can be applied in a contract only in certain circumstances and the performance of contractual obligation between the parties cannot be compared with the statutory functions of the authorities. Though in the present case, the Tamil Nadu Electricity Board is a State under Article 12 of the Constitution of India. Thus, a distinction is to be drawn between the contractual obligation between the parties and the statutory functions and the powers to be exercised under the statute by such officials of the State. These distinct factors are to be demarcated when the



facts are clear and more so relatable to the terms and conditions of contract.

13. Presuming that a writ Court examines the terms and conditions of the contract, a doubt arises whether it is possible to form an opinion with reference to the factual disputes which is to be adjudicated in an elaborate manner with reference to the original documents and evidences. Undoubtedly, there is a possibility of error, omission, commission or otherwise, if any such opinion is formed. That is the reason why the Constitutional Courts have taken a consistent view that in the matter of contractual obligations between the parties, they must approach the Civil Court of law as it involves trial nature adjudication, which would provide an opportunity to examine and cross examine the witnesses to cull out the truth and resolve the issues in the manner known to law.

14. Per contra, based on the mere affidavit in a writ petition and relying on certain xerox copies of the documents, which is enclosed in the typed set of papers, such factually disputed issues can never be adjudicated in a concrete manner so as to give complete justice to the parties, who are all approaching the writ Court.

15. With reference to the judgment relied upon by the petitioner, the Hon'ble Apex Court of India in Shree Rameshwara Rice Mills case cited supra at paragraphs~7 and 8 itself held that 'the position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12'. Therefore, only in the event of no dispute and there is a consensus between the contracting parties, the writ Court may be in a position to take a decision in such nature of issues and not otherwise. Therefore, the Hon'ble Supreme Court entertained the argument in a particular case by distinguishing the facts and ruled that the contractual obligations may be entertained by the writ Court only if there is no dispute between the contracting parties and there is a consensus. Even in paragraph~9, the Hon-ble Supreme Court observed that recovery of the damages will stand confined only to those cases where, the breach of conditions is admitted or it is not disputed.

16. In the present case, the demand notices are disputed by the petitioners, the manner in which the TANGEDCO assessed the damages or otherwise is also questioned by the petitioners, and not providing an opportunity to present the case is also raised. In this regard, examination in detail with reference to the



terms and conditions of the contract are imminent and require adjudication. Even in the other case relied on by the petitioners, the proposition laid down by the Hon'ble Supreme Court in J.G.Engineers Private Limited case cited supra is referred and in paragraph~19 the Hon'ble Apex Court observed that 'a contract cannot provide that one party with the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum, that is, a Court or an Arbitral Tribunal'. Admittedly, in the present case, the parties have not agreed for arbitration, thus, necessarily they have to approach the competent Court of law for the purpose of adjudicating issues.

17.Let us look into the reliance placed by the petitioners i.e. Clause~1 of the Memorandum of Understanding. Clause~1 reads as under:~

'This Provisional allotment is made to you for the collection of 60 (Sixty only) tones of dry fly ash per month from Mettur Thermal Power Project-Stage III, for the production of fly ash blocks. The cost of fly ash is free. However a sum of Rs.300/- per tonne towards service charges plus taxes and duties if any applicable has to be paid to you. You have to make your own arrangements for the collection of dry fly ash without any pollution.'

18.The above clause reveals that the collection of fly ash will be reviewed for a period of one year and penalty deemed fit will be imposed for the short collection of fly ash due to the fault of the company. For understanding purposes, this Court is of an opinion that the parties agreed that the performance of the petitioners company will be reviewed and penalty deemed fit will be imposed. Thus, the petitioners were very much aware and agreed regarding imposition of penalty by the TANGEDCO. Question arises whether an opportunity is to be provided prior to issuance of any such demand notice. In this regard, it is stated in the Clause that penalty deemed fit will be imposed for short collection of fly ash due to the fault of the company. This exactly is the dispute to be adjudicated as the short collection of fly ash and the quantum of short collection and the fault of the company or there is no fault of the company and the quantum of penalty to be imposed are disputed facts, which cannot be adjudicated in a writ proceedings.

19.These issues require an elaborate examination of the records and evidences. As far as the opportunity is concerned, no doubt if there is a consensus between the parties or if any doubt arises with reference to the performance or otherwise, it is open to the parties to the contract to negotiate and form an opinion and resolve the issues in an amicable manner. Therefore,



it is for the petitioners to approach the competent authorities, if they agree for such consensus or for a negotiation and settlement of issues. However, the impugned order is concerned, it is for the petitioners to initiate appropriate steps for effective adjudication of the disputes for the purpose of redressing their grievances in the manner known to law.

20.The petitioners if chosen to approach the competent Court of law for resolving the issues, the Court shall consider the period in which the writ petition was pending before the High Court for the purpose of condoning the delay, if any petition to condone the delay is filed by the petitioners.

21.With these observations, all the Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Deputy Director,
Government of India,
Ministry of Environment & Forests,
146, Paryavaran Bhawn,
C.G.O. Complex, Lodhi Road,
New Delhi.
- 2.The Chief Engineer/Civil Designs,
Tamilnadu Generation and
Distribution Corporation Limited,
3rd Floor, Eastern Wing, NPKRR Maaligai,
144, Anna Salai, Chennai - 2.
- 3.The Chief Engineer,
Mettur Thermal Power Project,
MTPP State III, Mettur Dam- 6,
Salem District.

+lcc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No.53391
+lcc to Mr.V.Elangovan, Advocate, S.R.No.5409
+lcc to Mr.M.Abulkalam, Advocate, S.R.No.5417

W.P.Nos.9834 to 9845 of 2013

SSD(CO)
SB(22/02/2022)