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W.P.No.4214 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4214 of 2020

And

W.M.P.Nos.4983, 4985 and 4986 of 2020

Ultra Tech Cement Ltd.,
Reddipalayam Cement Works
(Previously Known as Samruddhi Cement Ltd.,
& Prior to that as Grasim Industries Ltd. ... Petitioner

Vs.

- 1.Tamil Nadu Generation and Distribution Corporation Limited
Rep. by its Chairman and Managing Director,
No.800, Anna Salai,
Chennai 600 002.
- 2.The Chief Engineer,
Mettur Thermal Power Station-I,
Mettur Dam – 636 406.
- 3.The Superintending Engineer,
Mechanical-II,
Mettur Thermal Power station-I,
Mettur Dam – 636 406. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records of the third respondent in Lr.No.SE/M.II/MTPS-I/O&AHS/F. Short Collection / D.No. 91/2020 dated 07.02.2020 quash the same as illegal and



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arbitrary.

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For Petitioner : Mr.Rahul Balaji
For Respondents : Mr.K.Arun Prasad for R2
Standing Counsel.

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the entire records of the third respondent in Lr.No.SE/M.II/MTPS-I/O&AHS/F. Short Collection / D.No. 91/2020 dated 07.02.2020 and to quash the same as illegal and arbitrary.

2.The learned counsel appearing for the petitioner submits that the issue involved in this writ petition is no longer *res integra*. It has already been considered by this Court in W.P.No.30483 of 2015 on 12.01.2022 and this Court dismissed the said writ petition, however, challenging the order dated 12.01.2022, the petitioner therein has preferred writ appeal before the Hon'ble Division Bench of this Court.

3.It is useful to extract hereunder the order of this Court dated 12.01.2022 made in W.P.No.30483 of 2015:

"17. Let us look into the reliance placed by the petitioner i.e.Clause:5 of the Memorandum of Understanding. Clause-5 reads as under:

'5.Performance of the cement company



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in collecting 100% 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 company after one year of the reviewed period.'

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 petitioner company will be reviewed and penalty deemed fit will be imposed. Thus, the petitioner was 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



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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 petitioner 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 petitioner 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 petitioner 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 petitioner.

21. With these observations, the writ petition



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*stands dismissed. No costs. Consequently,
connected miscellaneous petitions are closed."*

4.Since this writ petition also lie on the same line, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

12.04.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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M.DHANDAPANI,J.
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