



WP(MD)No.19817 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.10.2023**

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THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.19817 of 2020

and

W.M.P.(MD)No.15631 of 2020

R.Vadivel

...Petitioner

/Vs./

1.The Deputy General Manager (Civil Division),
NLC Tamil Nadu Power Limited,
Tuticorin.

2.The General Manager,
Fly Ash Handling Plant,
NLC Tamil Nadu Power Limited,
Tuticorin.

...Respondents

PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to lift the fly ash from the respondents Unit namely NLC Tamil Nadu Power Ltd., Tuticorin without insisting any condition, on the basis of the petitioner's representations dated 09.01.2020 and 20.11.2020.

For Petitioner : Mr.S.Sadeshkumar

For Respondents : Mr.K.R.Laxman



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ORDER

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This writ petition has been filed for issuance of writ of mandamus directing the respondents to permit the petitioner to lift the fly ash without insisting for any condition, based on the representations made by the petitioner dated 09.01.2020 and 20.11.2020.

2. The case of the petitioner is that he is involved in the business of manufacturing fly ash bricks. The unit belonging to the petitioner has also been registered as the Micro Small and Medium Enterprises. They are involved in the process of manufacturing fly ash bricks from the year 2019 onwards. According to the petitioner, a notification was issued by the Ministry of Environment and Forests in the year 1999, permitting the thermal power plant to dispose of the available fly ash to those persons, who make use of the fly ash in manufacturing of cement, concrete blocks, bricks, etc. This notification was renewed from time to time and the entitlement of the manufacturers identified in this notification is kept intact.

3. The petitioner submitted all the relevant documents to the first respondent and sought for permission to lift the fly ash. The first respondent accordingly, permitted to lift fly ash from the plant on 04.04.2020. Thereafter,



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inspite of several representations, the respondents did not permit the petitioner to lift the fly ash and aggrieved by the same, the present writ petition has been filed before this Court.

4. The learned counsel appearing on behalf of the respondents submitted that a need was identified for restricting the excavation of top soil for manufacture of bricks and promoting the utilisation of fly ash in the manufacture of building materials and accordingly, coal or lignite based thermal power plants were permitted to dispose of the fly ash. Pursuant to the same, there are registered contractors, who participate in the public auction and the fly ash is taken by them in large quantities. This is one mode of augmentation of revenue for the respondents. Thereafter, whatever is left, is given free of cost to the non registered contractors, who are in need of the same for their manufacturing activities.

5. The learned counsel appearing for the respondents therefore submitted that the petitioner cannot as a matter of right ask for lifting the fly ash. The availability of the fly ash will be the criteria for giving the fly ash free of cost to the non registered contractors. The learned counsel, based on instructions, submitted that from the year 2020 onwards, no excess fly ash was available,



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after the registered contractors lifted the same from the coal/thermal power plant and therefore, there was no occasion for giving fly ash free of cost to any non registered contractors. The learned counsel therefore submitted that the relief sought for by the petitioner should not be granted by this Court.

6. This Court, while issuing a writ of mandamus, must first identify the legal right on the part of the petitioner and the corresponding legal duty on the part of the respondents. Unless these two conditions are satisfied, a Writ Court cannot issue a writ of mandamus.

7. In the instant case, notifications have been issued to the effect that fly ash can be given free of cost to the manufacturers, who are in need of the same. However, it all depends upon the availability of the fly ash in the coal/thermal power plant. The first priority is given to those contractors, who lift the fly ash by participating in the public auction. Thereafter, unless and otherwise the fly ash is available to be given free of cost, no non registered contractor can insist for the same as a matter of right. Hence, under these circumstances, this Court cannot issue a writ of mandamus as sought for by the petitioner.



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8. This is more so, for the reason that no excess fly ash was available from the year 2020 onwards to be given free of cost to non registered contractors. Hence, unless and otherwise the fly ash is available with the coal/thermal power plant after the supply to the registered contractors, no direction can be given to the respondents to supply fly ash free of cost for a mere asking. Accordingly, the relief sought for by the petitioner cannot be granted by this Court.

9. This writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Internet :Yes/No
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N.ANAND VENKATESH, J.

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Order made in
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09.10.2023