



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1344 OF 2024

1. Samadhan Bricks Factory,
Through it's Proprietor,
Samadhan Narayanrao Bidgar,
Age 30 yrs, Occ. Business,
R/o Dautpur, Tq. Parli Vaijnath,
District Beed.
2. Sainath Veet Udyog Samuh,
Through its Proprietor,
Shivdas Kachruba Bidgar,
age 36 yrs, Occ. Business,
R/o Dautpur, Tq. Parli Vaijnath,
Dist Beed.
3. Y.S.R. Infra,
Through its proprietor,
Mahesh Radhakishana Gitte,
Age 29 yrs, Occ. Business,
R/o. Vagbet, Tq. Parli Vaijnath,
Dist. Beed.
4. Shree Ganesh Bricks An AAC Blocks,
Through its Proprietor,
Meera Angad Changire,
Age 29 yrs, Occ. Business,
R/o Vagbet, Tq. Parli Vaijnath,
Dist. Beed.

Petitioners

VERSUS

1. The State Of Maharashtra
Through It's Secretary
Industries, Energy and Labour
Department, Mantralaya, Mumbai-32.
2. The Managing Director,
MHAGENCO Ltd.,
Prakash Gandh, Bandha East,

Mumbai 400 051.

3. The Executive Director,
(Environment and Safety)
Mahagenco Lt.,
HDIL Towers, 4th Floor, A-wing,
Prof. A.K. Marg, Bandra East,
Mumbai 400 051.
 4. Parli Thermal Power Station,
Parli, Tq. Parli, Dist. Beed.
Through the Chief Engineer.
 5. The Government of India,
Through its Joint Secretary (Ministry of Power)
Shram Shakti Bhavan, New Delhi.
 6. The Government of India,
Through the Joint Secretary,
(Ministry of Environment,
Forest and Climate Change)
New Delhi.
- Respondents

.....

Advocate for the Petitioners : Mr. B.S. Deshmukh
Government Pleader for Respondents : Mr. A.B. Girase

.....

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

Dated : 2nd February, 2024

.....

FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioners have approached this Court under Article 226 of the Constitution of India, thereby impugning E-auction notice dated 4.1.2024 issued by respondent No.4 i.e. Parli Thermal Power Station, Parli for sale of dry fly ash. Petitioners also seeks to issue a writ of mandamus against respondent nos.2 to 4 to provide them fly ash @ Rs.25 per

Metric Tons so also enhance quota to the extent of 40% or permit them to lift the fly ash from 80% quota.

2. The petitioners contend that they are small scale industries registered with Ministry of Micro, Small and Medium Enterprises. They are engaged in manufacturing of fly ash bricks, and blocks. They procure fly ash from Thermal Power Plants as raw material. According to the petitioners, under notification dated 14.9.1999 issued by the Government of India, guidelines for disposal of the fly ash discharged from thermal power plants were issued. Clause no.2 speaks about utilization of the ash and making it available at least for 10 years free of costs for the purpose of manufacturing units consuming the ash as a raw material. The 20% of fly ash was made available free of costs to the units like petitioners. Subsequently, fly ash was charged @ Rs.25/- per Metric tons under the caption of infrastructure development charges. According to the petitioners,

3. Recently Government of India issued a notification dated 31.12.2021 and promulgated new policy for disposal of fly ash. The power plants were made responsible for disposal of 100% fly ash in Eco friendly manner and it was suggested to be used in construction activities of road, fly over, embankments, shoreline protection within 300 kms of Thermal plant. The Thermal Power plants were permitted to charge for ash cost and transportation. Accordingly, respondent no.3 issued a letter based on Board Resolution. Sale of 20% dry fly ash was approved through e-auction at the base price of Rs.195

per Metric Ton to the Small Scale Industries and 80% of fly ash quota is made available to big companies @ Rs.81/- per Metric Tons. Now, the petitioners are asked to pay Rs.195/- per Metric Ton as a base price for auction. According to the petitioners, there is discrimination between the Small Scale Industries and big Industries. The petitioners, therefore, raises challenge to E-auction notice dated 4.1.2024 and seeks directions to make available ash to the Small Scale Industries as per the prevailing rate @ Rs.25/- per Metric Tons.

4. Mr. Deshmukh, learned advocate appearing for the petitioners would submit that apparently, there is discrimination among Small Scale Industries and big players. The petitioners permitted to lift ash from 20% quota @ Rs.195/- per Metric Tons, whereas big industries are granted 80% quota @ Rs.85/- per Metric Tons. The auction notice has been issued as per Board Resolution dated 5.1.2023. As such, the Small Scale Industries have been deprived of legitimate right to run the business. There is no rational in discrimination among industries or discrimination is arbitrary.

5. Mr. Girase, the learned Government Pleader for respondents State vehemently opposes the prayers and supports the impugned order.

6. We have considered the submissions advanced on behalf of the petitioners in great detail. Pertinently, the petitioners and similarly situated small scale industries (SSC) had previously approached this Court in Writ Petition no.1349 of 2023 with almost analogous prayers. In said writ petition,

e-auction notice dated 24.1.2023 issued by respondent no.3 which was also based on Board Resolution dated 5.1.2023 was subjected to challenge. One of the ground of challenge raised in that writ petition was alleged discriminatory treatment to the small scale industries vis-a-vis big industries. This Court, after considering the submissions advanced in light of policy promulgated by Government of India for sale of fly ash and modes of disposal, specifically observed that the Government of India policies have undertaken change in previous policy so as to protect interest of end consumers, who are consuming power to whom the same is to be provided at affordable rate, the respondents are permitted to dispose of dry fly ash by adopting bidding method. It is further observed that the petitioners have no absolute right to claim the benefit of the dry fly ash free of costs or at a particular rate and dismissed the challenge to auction process initiated in pursuance of the Board Resolution dated 5.1.2023. Apparently, the petitioners are again raising challenge to fresh auction notice dated 4.1.2024 which is based on same policy and notifications issued by the Ministry of Environmental, Government of India. Since this Court had already concluded the issue in writ petition no.1349 of 2023 vide order dated 4.5.2023, there is no reason to entertain fresh writ petition with similar challenge.

7. Although, Mr. Deshmukh learned advocate appearing for the petitioners attempted to advance submissions that the issue of discrimination was not raised in previous writ petition, we are not convinced with such submissions. Apparently, the similar argument was advanced before this

Court in earlier round of litigation as can be seen from paragraph no.11 of the judgment dated 4.5.2023. We find that the petitioners have raised same challenge based on new auction notice issued this year. Pertinently previous auction was based on same policy decision under board resolution which is basis of impugned Auction in present writ petition. All the grounds canvassed in present writ petition were available in earlier round of litigation.

8. For sake of arguments, even, it is assumed that some grounds which were available at the time of filing of earlier writ petition couldn't be raised, petitioners cannot be permitted to raise it in fresh writ petition. In Result, writ petition sans merit. Hence dismissed.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

...

aaa/ f