



W.P.Nos.2338 and 2342 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos. 2338 and 2342 of 2021

and

W.M.P.Nos. 2647, 2648, 2651 and 2653 of 2021

ACC Limited,
Madukkarai Cement Works,
P.O. Madukarai,
Coimbatore – 641 105.

... Petitioner in both W.Ps

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited,
[TANGEDCO]
Rep. by its Director [Generation],
NPKRR Maaligai,
No. 144, Anna Salai,
Chennai – 600 002.

2. The Chief Engineer,
Civil Designs,
Tamil Nadu Generation and Distribution Corporation Limited,
[TANGEDCO]
NPKRR Maaligai,
No. 144, Anna Salai,
Chennai – 600 002.



W.P.Nos.2338 and 2342 of 2021

3. The Chief Engineer,
Tamil Nadu Generation and Distribution Corporation Limited,
[TANGEDCO]
Mettur Thermal Power Station-I,
Mettur Dam – 636 406.

4. The Superintendent Engineer,
Mechanical- II,
Tamil Nadu Generation and Distribution Corporation Limited,
[TANGEDCO]
Mettur Thermal Power Station-I,
Mettur Dam – 636 406.

... Respondents in both W.Ps

Prayer in W.P. No. 2338 of 2021:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the fourth respondent in Lr. No. SE/M.II/MTPS-I/EE/O&AHS/F. ShortCollection/D. No. 31/2020 dated 13.01.2020 and confirmed by subsequent Lr. No. SE/M.II/MTPS-I/EE/O&AHS/F. ShortCollection/D. No. 497/2020 dated 31.07.2020 (inadvertently date is wrongly mentioned as 31.02.2020) and quash the same as illegal and arbitrary and consequently direct the first and second respondents to issue appropriate instructions to the third and fourth respondents to strictly comply with the terms of the agreement between parties and not to levy any penalty for short collection.



W.P.Nos.2338 and 2342 of 2021

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Prayer in W.P. No. 2342 of 2021:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the fourth respondent in Lr. No. SE/M.II/MTPS-I/EE/O&AHS/F. ShortCollection/D. No. 92/2020 dated 07.02.2020 and quash the same as illegal and arbitrary and consequently direct the first and second respondents to issue appropriate instructions to the third and fourth respondents to strictly comply with the terms of the agreement between parties and not to levy any penalty for short collection.

For Petitioner
in both W.Ps : Mr.A.R.Ramanathan

For Respondents : Mr. K.Arun Prasad,
in both W.Ps Standing Counsel

COMMON ORDER

These Writ Petitions have been filed challenging the orders passed by the fourth respondent dated 13.01.2020 and 07.02.2020, thereby imposing penalty for short collection of fly ash to the tune of Rs.8,37,95,865/- and 6,38,71,718/- respectively and the order passed by the



W.P.Nos.2338 and 2342 of 2021

fourth respondent dated 31.07.2020, thereby refusing to review the orders dated 13.01.2020 and 07.02.2020.

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2. The petitioner is engaged in the business of manufacture and sale of Cement and the manufacture of cement involved requirement of several raw materials. The important raw materials are lime stone, gypsum and fly ash. The principal source of fly ash is from Thermal Power Stations, where coal is used as a fuel. However, it constituted a major environmental hazard and there were great difficulties involved in collection and disposal of the same and heavy financial cost for disposal incurred by Thermal Power Plants and as such, utilization of such fly ash was started by industries, including the cement and brick industries. It has resulted in significant and substantial mitigation of environmental hazards caused by fly ash.

3. While that being so, the Central Government published notification dated 14.09.1999, whereby the State Electricity Boards were directed to facilitate by making available land, electricity and water for manufacturing activities and provide access to the ash lifting area for



W.P.Nos.2338 and 2342 of 2021

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promoting and setting up of ash-based production units in the proximity of the area where ash is generated by the power unit. In pursuance of the said notification, the respondents offered to the petitioner in the Unit II of the third respondent for setting up fly ash collection system. Accordingly, the petitioner was permitted to install a fly ash collection system of the third respondent's Mettur Thermal Power Station at the cost of the petitioner and also executed the Memorandum of Understanding (hereinafter referred to as 'the MoU' for short) on 05.12.2001. The term of the contract was for a period of nine years and the petitioner had also paid security deposit of Rs.5 lakhs.

4. As per the MoU, the petitioner collected the whole of the fly ash and thereafter, it was reduced to 80% to the satisfaction of the respondents, for which the petitioner was paying Rs.60/- per ton as service charges and over the period of time, an additional amount of Rs.350/- per ton was sought and the petitioner was directed to pay an amount of Rs.60 + Rs.350/- per ton being the material cost per ton for the fly ash collected from Unit II of the third respondent. The petitioner is also paying a sum of Rs.100/- per ton for



W.P.Nos.2338 and 2342 of 2021

electricity and water charges and paying a sum of Rs.30/- per ton towards operation and maintenance and collection of fly ash. After completion of nine years, it was extended until further award of fresh tenders by communication dated 17.02.2011. Thereafter, by communication dated 31.05.2019, the third respondent terminated the contract by not extending the MoU. However, the petitioner was not served with any show cause notice and unilaterally, the third respondent cancelled the contract. Now, the petitioner was issued the orders impugned in these Writ Petitions, thereby penalty was imposed for short collection of fly ash for the period from August 2015 to March 2017 and April 2017 to May 2019.

5. On a perusal of the working-sheet, which was merged with the orders impugned, it is seen that every month, there was shortage in the collection of fly ash by the petitioner. The rate fixed per ton and service charges while imposing penalty, are at market price. Further, the petitioner was not served with any notice and the petitioner was not given any opportunity of hearing before imposing the penalty. That apart, the fourth respondent ought to have reviewed the collection of fly ash atleast once a



W.P.Nos.2338 and 2342 of 2021

year. However, after termination of contract from 31.05.2019, the penalty was imposed on the petitioner, that too, for the period from August 2015 to March 2017 and April 2017 to May 2019. Further, there is no justification for the price fixed by the fourth respondent per ton, while imposing penalty.

6. Though the third respondent stated in the counter-affidavit that the ash content taken for calculation of short collection of dry fly ash was based only on the actual analysis of coal sample collected at Mettur Thermal Power Station-I, the petitioner was never informed about the short collection of dry fly ash. It is further stated in the counter-affidavit that the short collection of dry fly ash due to changing of dry system into wet system was due to problems in the equipments of Pressurised Dense Phase Fly Ash Collection System (PDFACS), which was only maintained by the petitioner and for choking in the ash, conveying pipe lines, puncture in the bends and pipe lines, failure of seals, non-placement of sufficient vehicles for lifting of dry fly ash from the soil etc., the petitioner was never informed about the cost and the petitioner was never given any opportunity to rectify the same. That apart, for the short collection of dry fly ash for the period from August



W.P.Nos.2338 and 2342 of 2021

2015 to March 2017 and April 2017 to May 2019, only termination of contract was identified. There is absolutely no explanation by the fourth respondent for imposing penalty after a period of four years. Therefore, it is clear violation of principles of natural justice and on this sole ground, the orders impugned in these Writ Petitions cannot be sustained and they are liable to be quashed.

7. In view of the above, the impugned orders dated 13.01.2020, 07.02.2020 and 31.07.2020 are quashed. The fourth respondent is at liberty to issue notice to the petitioner and after giving an opportunity of hearing to him and pass orders for imposing penalty in accordance with law.

8. In the result, these Writ Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

20.06.2024

Index:Yes/No
Neutral Citation/Yes/No
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W.P.Nos.2338 and 2342 of 2021

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