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W.A.No.1904 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.No.1904 of 2025
and
C.M.P.No.14500 of 2025

M/s.Ultra Tech Cement Ltd.,
(Unit: Reddipalayam Cement Works),
Previously known as Samruddhi Cement Ltd.,
and prior to that, Grasim Industries Ltd,
Reddipalayam Post, Ariyalur-621 704
Ariyalur Taluk and District.

... Appellant/Petitioner

-VS-

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

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, seeking



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to set aside the order dated 18.04.2023 passed in W.P.No.3069 of 2020.

For Appellant : Mr.Rahul Balaji

For Respondents : Mr.K.Arun Prasad
Standing Counsel

ORDER

(By J.Nisha Banu,J.)

A challenge in the Writ Appeal is to the order dated 18.04.2023 passed in W.P.No.3069 of 2020, by which, the Writ Petition was dismissed on the basis of the covered order of this Court in W.P.No.30483 of 2015 dated 12.01.2022.

2. Mr.K.Arun Prasad, learned Standing Counsel takes notice for the respondents. By consent on either side, the Writ Appeal itself is taken up for final disposal at the admission stage.

3. The case of the appellant is that the respondents demanded Rs.6,52,94,508/- from the appellant for short collection of fly ash along with penalty specified under Clause (5) of the Memorandum of Understanding (MoU). In fact, the MoU, pursuant to its expiry, is not in existence as of



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today. The short collection of fly ash is not beneficial to the appellant for the

reason that the appellant is actually in need of excess of the collection made.

It is further case of the appellant that they deployed personnel to ensure accumulation of fly ash from third parties for its manufacturing activities and also from the respondents for its uninterrupted supply to the manufacturing process. There is no provision prescribed under the MoU for levy of penalty and therefore, the entire demand coupled with imposition of levy for the period from April, 2017 to May, 2019 is not wholly justifiable. When there was a stipulation of stop gap arrangement in the letter for minimum of one year or till the outsourcing contract is awarded by the respondents, the levy of penalty for the interregnum period is illegal, as the no outsourcing contract in the contract has been awarded by the respondents.

4. It is also the case of the appellant that the finding of the learned Single Judge that writ will not lie solely on the ground of violation of principles of natural justice is not correct, as the Respondent is a State for the purpose of Article 12 of the Constitution. Learned Single Judge erred in directing the appellant to approach the Civil Court to question the impugned

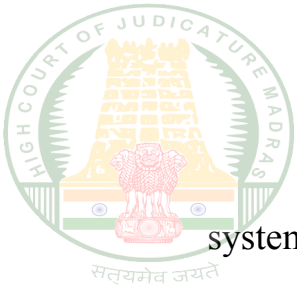


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order of demand, instead of directing the respondents to invoke Civil Court jurisdiction to levy the penalty under the MoU. The demand made by the respondents is against the proposition laid down by the Supreme Court in the case of *State of Karnataka vs. Shree Rameshwara Rice Mills, thiruthahalli*, reported in *(1987) 2 SCC 160* and since there was no opportunity afforded to the appellant, they were not able to put forth their defence in its entirety. Thus, it is prayed that the impugned order of the learned Single Judge is liable to be set aside.

5. It is the stand of the respondents that the MoU was signed between the respondents and the appellant in the year 2002 and the appellant was permitted to install and erect machineries to collect fly sh for a period of nine years from the date of commissioning of the system. There was a short collecting of fly ash, which was calculated based on the actual analysis of coal sample collected at Mettur TPS. According to the respondents, it is incumbent on the appellant to procure 100% ash collection for their operation and maintenance of PDFAC system. The reason for short collection of fly ash is only due to the changing of dry system into wet



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system owing to various reasons such as non-placement of sufficient vehicles for lifting of dry fly ash from the silo, etc. It is also the stand of the respondents that the appellant, having accepted the terms and conditions in the MoU and having signed the MoU, cannot question the clauses in the MoU, as Clause 5 of the MoU empowers the respondents to levy penalty on the appellant. Thus, it was strenuously argued that the impugned demand notice is perfectly valid and need not be interfered with by this Court, as the same has been rightly upheld by the learned Single Judge.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The Writ Petition filed by the appellant was dismissed by the learned Single Judge based on the order of this Court passed in an identical situation in W.P.No.30483 of 2015. In the order of the learned Single Judge, it has been stated that against the order passed in W.P.No.30483 of 2015, the petitioner therein preferred Writ Appeal before the Division Bench of this Court. It is not known as to the fate of the Writ Appeal said to be preferred



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against W.P.No.30483 of 2015. Once a conclusion has been reached in respect of the similar issue, a Judge can either accept the view taken by the previous Bench or refer the case for larger Bench, in case he decides to disagree with the finding. In this case, the learned Single Judge has concurred with the finding rendered by this Court in an identical issue and dismissed the Writ Petition. Even on merits, the issues as to whether levy can be imposed for the period of stop gap arrangement and whether the demand of amount is in consonance with the MoU are all subject matters to be dealt with by the competent Civil Court and such issues cannot be decided without proper adjudication, as the same will cause huge loss to the State Exchequer. Hence, we are of the view that the order of the learned Single Judge holds goods, requiring no interference by this Court.

8. Accordingly, ***this Writ Appeal is dismissed.*** The appellant is at liberty to approach the competent Civil Court for redressal of its grievance. It is made clear that the period during which *lis* is pending before this Court can be excluded for the purpose of computing the limitation. No costs. Consequently, connected Miscellaneous Petition is closed.



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(J.N.B.J.) (M.J.R,J.)
03.07.2025

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To:

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Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Previously known as TNEB,
No.800, Anna Salai, Chennai – 600 002.
2. The Chief Engineer,
Mettur Thermal Power Station -1,
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